

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 664

**Introduced by Committee on Banking and Financial Institutions
(Senators Vargas (Chair), Blakeslee, Evans, Kehoe, Liu, Padilla,
and Walters)**

February 18, 2011

An act to amend the heading of Chapter 1 (commencing with Section 99) of Division 1 of, and to amend the heading of Division 1 (commencing with Section 99) of, and to amend and renumber Sections 100.5, 102, 103, 105, 105.2, 105.5, 105.7, 106, 107, 109, 110, 111, 112, 113, 115, 119, 120, 121, 122, 123, 124, 125, 126, 126.5, 126.7, 127, 128, 129, 130, 131, 132, 134, 134.5, 135, 137, 139, 139.2, 139.3, 139.4, 139.5, 139.7, 139.9, 139.95, 140, 140.3, 140.5, 142, 142.5, 143, 144, 145, 146, 146.3, 146.7, 148, 148.5, 149.3, 150, 151, 180, 181, 182, 184, 185, 200, 201, 210, 210.5, 211, 212, 213, 214, 215, 215.5, 216, 216.3, 217, 218, 219, 220, 221, 222, 223, 230, 230.5, 231, 232, 233, 234, 235, 236, 250, 250.5, 251, 252, 253, 255, 258, 259, 260, 261, 262, 263, 265, 270, 271, 271.5, 272, 273, 273.5, 274, 275, 276, 277, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 292.5, 293, 295, 295.1, 295.2, 295.3, 295.4, 298, 298.1, 299, 300, 300.1, 300.2, 300.3, 300.4, 301, 301.1, 302, 302.1, 302.2, 302.3, 305, 305.1, 305.2, 305.3, 305.4, 305.5, 305.6, 305.7, 305.8, 305.9, 310, 310.1, 310.2, 310.3, 310.4, 315, 315.1, 315.2, 315.3, 315.4, 315.5, 315.6, 315.7, 315.8, 315.9, 315.10, 315.11, 315.12, 320, 320.1, 320.2, 320.3, 320.4, 320.5, 320.6, 320.7, 320.8, 320.9, 320.10, 320.11, 320.12, 320.13, 320.14, 320.15, 320.16, 320.17, 320.18, 320.19, 320.20, 320.21, 320.22, 325, 325.1, 325.2, 330, 335, 335.1, 350, 351, 352, 353, 354, 355, 356, 357, 360, 360.5, 361, 362, 363, 364, 365, 399, 400, 401, 402, 403, 404, 405, 406, 407, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 550, 551, 600, 600.3, 600.4, 600.6, 600.8, 600.10, 600.12, 602, 620,

621, and 622 of, to add the headings of Article 1 (commencing with Section 300), Article 2 (commencing with Section 320), Article 3 (commencing with Section 350), Article 4 (commencing with Section 370), Article 5 (commencing with Section 400), and Article 6 (commencing with Section 405) to, Chapter 3 of Division 1 of, to add the headings of Article 1 (commencing with Section 600) and Article 2 (commencing with Section 620) to, Chapter 6 of Division 1 of, to add the headings of Chapter 2 (commencing with Section 250), Chapter 3 (commencing with Section 300), Chapter 4 (commencing with Section 450), Chapter 5 (commencing with Section 550), and Chapter 6 (commencing with Section 600) to, Division 1 of, to repeal the headings of Article 1 (commencing with Section 200), Article 2 (commencing with Section 210), Article 3 (commencing with Section 230), Article 4 (commencing with Section 250), Article 4.5 (commencing with Section 265), Article 5 (commencing with Section 270), Article 6 (commencing with Section 280), Article 7 (commencing with Section 295), Article 8 (commencing with Section 305), and Article 9 (commencing with Section 335) of, Chapter 2 of, to repeal the headings of Article 1 (commencing with Section 350), Article 2 (commencing with Section 360), and Article 4 (commencing with Section 399) of, Chapter 3 of, to repeal the headings of Article 1 (commencing with Section 600) and Article 2 (commencing with Section 620) of, Chapter 5 of, and to repeal the headings of Chapter 1.5 (commencing with Section 180), Chapter 2 (commencing with Section 200), Chapter 3 (commencing with Section 350), Chapter 4 (commencing with Section 500), Chapter 4.5 (commencing with Section 550), and Chapter 5 (commencing with Section 600) of, Division 1 of, the Financial Code, relating to financial institutions. *An act to amend and renumber the headings of Division 1.1 (commencing with Section 4000), Division 1.2 (commencing with Section 4050), Division 1.3 (commencing with Section 4100), Division 1.5 (commencing with Section 4800), Division 1.6 (commencing with Section 4970), Division 1.7 (commencing with Section 4981), Division 1.8 (commencing with Section 4990), and Division 1.9 (commencing with Section 4995) of, to add Division 1.1 (commencing with Section 1000) and Division 1.2 (commencing with Section 2000) to, and to repeal and add Division 1 (commencing with Section 99) of, the Financial Code, relating to financial institutions.*

LEGISLATIVE COUNSEL’S DIGEST

SB 664, as amended, Committee on Banking and Financial Institutions. Financial institutions.

Existing law establishes the Department of Financial Institutions in the Business, Transportation and Housing Agency and provides that the department is in charge of the execution of specified laws relating to various financial institutions and financial services.

This bill would ~~amend and renumber~~ *revise and recast* various provisions of the Financial Code applicable to financial institutions and financial services regulated by the department and would make other conforming changes. *The bill would also require a bank that establishes a branch office in this state in accordance with the National Bank Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, to provide a specified notice to the Commissioner of Financial Institutions within 10 days of the establishment, relocation, or redesignation of offices.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Division 1 (commencing with Section 99) of the
2 Financial Code is repealed.
3 SEC. 2. Division 1 (commencing with Section 99) is added to
4 the Financial Code, to read:

5
6 DIVISION 1. FINANCIAL INSTITUTIONS

7
8 CHAPTER 1. DEFINITIONS

9
10 99. This division and Division 1.1 shall be known, and may be
11 cited, as the “Banking Law.”

12 101. If and to the extent that any provision of this division is
13 preempted by federal law, the provision does not apply and shall
14 not be enforced.

15 103. The word “bank” as used in this division means any
16 incorporated banking institution that shall have been incorporated
17 to engage in commercial banking business, industrial banking, or
18 trust business.

1 105. Banks are divided into the following classes:

2 (a) Commercial banks.

3 (b) Industrial banks.

4 (c) Trust companies.

5 107. “Commercial bank” means a corporation organized for
6 the purpose of engaging in the commercial banking business.

7 109. “Commercial banking business” includes, but is not
8 limited to, the business of soliciting, receiving, or accepting of
9 money or its equivalent on deposit as a regular business whether
10 the deposit is made subject to check or is evidenced by a certificate
11 of deposit, a passbook, a note, a receipt, or other writing, provided
12 that nothing herein shall apply to or include money or its
13 equivalent left in escrow, or left with an agent pending investment
14 in real estate or securities for, or on account of, his or her
15 principal. In addition, “commercial banking business” means to
16 lend money on the security of real or personal property or without
17 security; to discount or deal in bills, notes, or other commercial
18 paper; to buy and sell for the account of customers, and, if eligible
19 for investment, for its own account, securities, gold and silver
20 bullion, foreign coins, and bills of exchange; and generally to
21 transact a commercial banking business.

22 111. “Industrial bank” means a corporation organized for the
23 purpose of engaging in the industrial banking business.

24 113. “Industrial banking business” includes the making of
25 loans and acceptance of deposits, including deposits evidenced by
26 investment or thrift certificates, but excluding demand deposits.

27 115. “Trust business” means the business of acting as executor,
28 administrator, guardian or conservator of estates, assignee,
29 receiver, depository or trustee under the appointment of any court,
30 or by authority of any law of this or any other state or of the United
31 States, or as trustee for any purpose permitted by law.

32 117. “Trust company” means a corporation, industrial bank,
33 or a commercial bank that is authorized to engage in the trust
34 business.

35 119. “Bank” or “banks” includes commercial banks, industrial
36 banks, and trust companies unless the context otherwise requires.
37 However, “bank” does not include a savings association or a
38 credit union.

39 121. (a) “Office” includes head office, branch office, and any
40 other authorized place of business of a licensee.

1 (b) “Head office” means the principal place of business of a
2 licensee.

3 123. “Real property” and “personal property” have the
4 meanings defined in and shall be construed in accordance with
5 Title 1, Part 1, Division 2, Civil Code of California.

6 125. “Commissioner” means the Commissioner of Financial
7 Institutions and “department” means the Department of Financial
8 Institutions.

9 127. “Person” means an individual, sole proprietorship,
10 partnership, joint venture, association, trust, estate, business trust,
11 corporation, joint stock company, limited liability company,
12 unincorporated association, sovereign government or agency,
13 instrumentality, or political subdivision thereof, or any similar
14 entity or organization.

15 129. Unless the provision or the context otherwise requires,
16 the definitions set forth in this chapter govern the construction of
17 this division.

18 131. References in this division to the voting of shares shall
19 be construed in accordance with Section 111 of the Corporations
20 Code.

21 133. If the articles of a bank provide for more or less than one
22 vote for any share on any matter, the references in Sections 139
23 and 141 to a majority or other proportion of shares means, as to
24 such matter, a majority or other proportion of the votes entitled
25 to be cast. Whenever, under Division 1 (commencing with Section
26 100), Title 1 of the Corporations Code or this division, shares are
27 disqualified from voting on any matter, they shall not be considered
28 outstanding for the determination of a quorum at any meeting to
29 act upon, or the required vote to approve action upon, such matter
30 under any provision of Division 1 (commencing with Section 100),
31 Title 1 of the Corporations Code, of this division, or of the articles
32 or bylaws.

33 135. Any requirement in this division for a vote of each class
34 of outstanding shares shall be construed in accordance with
35 Section 117 of the Corporations Code.

36 137. “Approved by (or approval of) the board” means
37 approved or ratified by the vote of the board or by the vote of a
38 committee authorized to exercise the powers of the board, except
39 as to any matter not within the competence of the committee under
40 Section 311 of the Corporations Code or any matter for which this

1 *division also requires approval of the shareholders or approval*
2 *of the outstanding shares.*

3 139. *“Approved by (or approval of) the outstanding shares”*
4 *has the meaning set forth in Section 152 of the Corporations Code*
5 *and shall include approval by the affirmative vote of a majority*
6 *of the outstanding shares of each class or series entitled, by any*
7 *provision of the articles, of this division, or of Division 1*
8 *(commencing with Section 100), Title 1 of the Corporations Code,*
9 *to vote as a class or series on the subject matter being voted upon,*
10 *and shall also include approval by the affirmative vote of such*
11 *greater proportion (including all) of the outstanding shares of any*
12 *class or series if such greater proportion is required by the articles,*
13 *by this division, or by Division 1 (commencing with Section 100),*
14 *Title 1 of the Corporations Code.*

15 141. *“Approved by (or approval of) the shareholders” has the*
16 *meaning set forth in Section 153 of the Corporations Code and*
17 *shall include approval or ratification by the affirmative vote or*
18 *written consent of such proportion (including all) greater than a*
19 *majority of the shares of any class or series as may be provided*
20 *in the articles, in this division, or in Division 1 (commencing with*
21 *Section 100), Title 1 of the Corporations Code for all or any*
22 *specified shareholder action.*

23 143. *“Articles” has the meaning set forth in Section 154 of the*
24 *Corporations Code.*

25 145. *“Board” has the meaning set forth in Section 155 of the*
26 *Corporations Code.*

27 147. *“California” means:*

28 (a) *When used with respect to a bank, in the case of a state bank,*
29 *a bank that is organized under the laws of this state and, in the*
30 *case of a national bank, a national bank that maintains its main*
31 *office in this state.*

32 (b) *When used with respect to an office of a bank, an office*
33 *which is located in this state.*

34 (c) *When used with respect to any corporation other than a*
35 *bank, a corporation that is organized under the laws of this state.*

36 149. *“CAMELS composite rating” shall have the meaning set*
37 *forth in Section 327.8(j) of Title 12 of the Code of Federal*
38 *Regulations.*

39 151. *“Certificate of correction” means a certificate executed*
40 *and filed with the Secretary of State pursuant to Section 109 of*

1 *the Corporations Code, subject, however, to the provisions of*
2 *Section 1105.*

3 153. *“Certificate of determination” has the meaning set forth*
4 *in Section 156 of the Corporations Code, subject, however, to the*
5 *provisions of Section 1104.*

6 155. *“Certificate of revocation” means a certificate executed*
7 *and filed with the Secretary of State pursuant to the second and*
8 *third sentences of subdivision (c) of Section 110 of the*
9 *Corporations Code, subject, however, to the provisions of Section*
10 *600.12.*

11 157. *“Common shares” has the meaning set forth in Section*
12 *159 of the Corporations Code.*

13 159. (a) *“Confidential information” means any information*
14 *regarding a licensee contained in, or related to, any of the*
15 *following:*

16 (1) *Applications filed with the commissioner.*

17 (2) *Examination, operating, condition, or any other reports*
18 *prepared by, on behalf of, or for the use of, the commissioner.*

19 (3) *Information received in confidence by the commissioner.*

20 (b) *Confidential information is the property of the commissioner.*

21 161. *“Constituent corporation,” when used with respect to a*
22 *corporation:*

23 (a) *In the case of a merger, has the meaning set forth in Section*
24 *161 of the Corporations Code.*

25 (b) *In the case of a consolidation, means a corporation that is*
26 *consolidated with one or more other corporations.*

27 163. *“Contributed capital” means all of shareholders’ equity*
28 *other than retained earnings. However, nothing in this section*
29 *shall prohibit a bank from transferring amounts from time to time*
30 *from its retained earnings to its contributed capital, subject to any*
31 *applicable statutes, regulations, and generally accepted accounting*
32 *principles.*

33 165. *“Credit union” means a corporation of the type described*
34 *in Section 14002 organized under the laws of this state or a*
35 *corporation of similar type organized under the laws of the United*
36 *States or of any state of the United States other than this state.*

37 167. *“Directors” has the meaning set forth in Section 164 of*
38 *the Corporations Code.*

1 169. “Disappearing,” when used with respect to a corporation,
2 means a constituent corporation that is not the surviving
3 corporation.

4 171. “Distribution to its shareholders” has the meaning set
5 forth in Section 166 of the Corporations Code. However, in
6 Division 1 (commencing with Section 100), Title 1 of the
7 Corporations Code and in this division, “distribution to its
8 shareholders” does not include any purchase of shares by a bank
9 or by a majority-owned subsidiary of a bank which is necessary
10 to reduce or avoid loss to such bank or to such subsidiary on an
11 extension of credit previously made in good faith. Also, in this
12 division, “distribution to its shareholders” includes any
13 distribution made by a bank or by a majority-owned subsidiary of
14 a bank to the shareholders of any corporation of which such bank
15 is a majority-owned subsidiary.

16 173. (a) “Foreign,” when used with respect to a bank, an
17 office of a bank, or any corporation other than a bank, means
18 foreign (other nation) or foreign (other state).

19 (b) “Foreign banking corporation” means a foreign bank.

20 175. “Foreign nation” means any nation other than the United
21 States, including, without limitation, any subdivision, territory,
22 trust territory, dependency, colony, or possession of any nation
23 other than the United States. “Foreign nation” includes Puerto
24 Rico, Guam, American Samoa, the Virgin Islands, and any
25 territory, trust territory, dependency, or insular possession of the
26 United States.

27 177. (a) The definition of “state of the United States” in
28 Section 207 does not apply to this section. In this section, “state
29 of the United States” means any state of the United States or the
30 District of Columbia.

31 (b) “Foreign (other nation):”

32 (1) When used with respect to a bank, means any bank
33 (including, without limitation, any commercial bank, merchant
34 bank, or other institution that engages in banking activities that
35 are usual in connection with the business of banking in the nation
36 in which the institution is organized or operating) other than (A)
37 a bank that is organized under the laws of a state of the United
38 States or (B) a national bank that maintains its main office in a
39 state of the United States.

1 (2) *When used with respect to an office of a bank, means an*
2 *office that is located in a place other than a state of the United*
3 *States.*

4 (3) *When used with respect to any corporation other than a*
5 *bank, means a corporation that is organized under the laws of a*
6 *foreign nation.*

7 179. *“Foreign (other state)”:*

8 (a) *When used with respect to a bank, means a bank that is*
9 *organized under the laws of any state of the United States other*
10 *than this state, or a national bank that maintains its main office*
11 *in any state of the United States other than this state, and includes*
12 *any savings bank, as defined in Section 3(g) of the Federal Deposit*
13 *Insurance Act (12 U.S.C. Sec. 1813(g)), that is organized under*
14 *the laws of a state other than this state.*

15 (b) *When used with respect to an office of a bank, means an*
16 *office that is located in a state other than this state.*

17 (c) *When used with respect to a corporation other than a bank,*
18 *means a corporation that is organized under the laws of any state*
19 *of the United States other than this state or under the laws of the*
20 *United States.*

21 181. *“Insured:”*

22 (a) *When used with respect to a bank or an office of a bank,*
23 *means a bank or office the deposits of which are insured by the*
24 *Federal Deposit Insurance Corporation under the Federal Deposit*
25 *Insurance Act (12 U.S.C. Sec. 1811 et seq.).*

26 (b) *When used with respect to a deposit, means a deposit that*
27 *is insured by the Federal Deposit Insurance Corporation under*
28 *the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.).*

29 183. *“Law of the domicile” means:*

30 (a) *When used with respect to a national bank, the law of the*
31 *United States.*

32 (b) *When used with respect to a state bank, the law of the state*
33 *of the United States under which the bank is organized.*

34 (c) *When used with respect to a foreign (other nation) bank, the*
35 *law of the foreign nation under which the bank is organized.*

36 185. *“Licensee” has the following meanings:*

37 (a) *Any bank authorized by the commissioner pursuant to*
38 *Section 1042 to transact banking or trust business.*

39 (b) *Any industrial bank authorized by the commissioner pursuant*
40 *to Section 1042 to transact industrial banking business.*

- 1 (c) Any trust company authorized by the commissioner pursuant
2 to Section 1042 to transact trust business.
- 3 (d) Any foreign (other nation) bank that is licensed under Article
4 2 (commencing with Section 1780) of Chapter 20 or under Article
5 3 (commencing with Section 1800) of Chapter 20.
- 6 (e) Any corporation licensed by the commissioner to transmit
7 money pursuant to Division 1.2 (commencing with Section 1920).
- 8 (f) Any person authorized by the commissioner to conduct the
9 business of a savings association pursuant to Division 2
10 (commencing with Section 5000).
- 11 (g) Any credit union authorized by the commissioner to conduct
12 business pursuant to Section 14154.
- 13 (h) Any foreign (other state) credit union licensed by the
14 commissioner to conduct business pursuant to Chapter 11
15 (commencing with Section 16000) of Division 5.
- 16 (i) Any foreign (other nation) credit union licensed by the
17 commissioner to conduct business pursuant to Chapter 12
18 (commencing with Section 16500) of Division 5.
- 19 (j) Any industrial loan company authorized by the commissioner
20 to conduct insurance premium finance business pursuant to
21 Division 7 (commencing with Section 18000).
- 22 (k) Any corporation licensed by the commissioner as a business
23 and industrial development corporation pursuant to Section 31154.
- 24 187. “Majority-owned subsidiary” has the meaning set forth
25 for “subsidiary” in subdivision (a) of Section 189 of the
26 Corporations Code.
- 27 189. (a) “National bank” or “national banking association”
28 means a national banking association organized under the National
29 Bank Act.
- 30 (b) For purposes of this division, a national bank is deemed to
31 be a corporation.
- 32 191. “Officers’ certificate” has the meaning set forth in Section
33 173 of the Corporations Code.
- 34 193. “Resulting,” when used with respect to a corporation,
35 means:
- 36 (a) In the case of a consolidation, the corporation into which
37 the constituent corporations are consolidated.
- 38 (b) In the case of a conversion, the corporation into which the
39 converting corporation is converted.

1 195. “ROCA supervisory rating” shall have the meaning set
2 forth in Section 327.8(k) of Title 12 of the Code of Federal
3 Regulations.

4 197. “Savings association” includes a savings association, a
5 savings and loan association, and a savings bank. However,
6 “savings association” does not include any savings bank of the
7 type defined in Section 3(g) of the Federal Deposit Insurance Act
8 (12 U.S.C. Section 1813(g)).

9 199. “Series,” when used with respect to shares, has the
10 meaning set forth in Section 183 of the Corporations Code.

11 201. “Shares” has the meaning set forth in Section 184 of the
12 Corporations Code.

13 203. “Shareholder” has the meaning set forth in Section 185
14 of the Corporations Code.

15 205. “State”:

16 (a) When used with respect to a corporation, means a
17 corporation that is organized under the laws of a state of the United
18 States.

19 (b) When used with respect to an office of a foreign (other
20 nation) bank, means an office that the bank is authorized to
21 maintain under the laws of a state of the United States.

22 207. “State of the United States” means any state of the United
23 States, the District of Columbia, any territory of the United States,
24 Puerto Rico, Guam, American Samoa, the Trust Territory of the
25 Pacific Islands, the Virgin Islands, and the Northern Mariana
26 Islands.

27 209. “Surviving,” when used with respect to a corporation,
28 means a corporation in which one or more other corporations are
29 merged.

30 211. “Uniform Interagency Trust Rating System (UITRS)”
31 shall have the meaning set forth in the policy statement regarding
32 the uniform interagency trust rating system published by the
33 Federal Financial Institutions Examination Council on October
34 13, 1998 (63 Fed. Reg. 54704).

35 213. “Uniform Rating System for Informational Technology
36 (URSIT)” shall have the meaning set forth in the policy statement
37 regarding the uniform rating system for information technology
38 published by the Federal Financial Institutions Examination
39 Council on January 20, 1999, and implemented on or before April
40 1, 1999 (64 Fed. Reg. 3109).

1 215. “Vote” has the meaning set forth in Section 194 of the
2 Corporations Code.

3 217. “Voting power” has the meaning set forth in Section 194.5
4 of the Corporations Code.

5

6

CHAPTER 2. TRANSITION PROVISIONS

7

8 250. In this chapter, unless the provision or context requires
9 otherwise:

10 (a) “New General Corporation Law” means Division 1
11 (commencing with Section 100), Title 1 of the Corporations Code,
12 as in effect on and after January 1, 1977.

13 (b) “Prior Banking Law” means this division, as in effect on
14 December 31, 1978.

15 (c) “Prior General Corporation Law” means Division 1
16 (commencing with Section 100), Title 1 of the Corporations Code,
17 as in effect on December 31, 1976.

18 (d) “Revised Banking Law” means this division, as in effect on
19 and after January 1, 1979, and as repealed and readded as of
20 January 1, 2012.

21 (e) “Subject institution” means:

22 (1) Any corporation incorporated under the laws of this state
23 which is, with the approval of the commissioner, incorporated for
24 the purpose of engaging in, or which is authorized by the
25 commissioner to engage in, the commercial banking business under
26 this division.

27 (2) Any corporation incorporated under the laws of this state
28 which is, with the approval of the commissioner, incorporated for
29 the purpose of engaging in, or which is authorized by the
30 commissioner to engage in, the trust business under this division.

31 (3) Any corporation incorporated under the laws of this state
32 which is, with the approval of the commissioner, incorporated for
33 the purpose of engaging in, or which is authorized by the
34 commissioner to engage in, business under Article 1 (commencing
35 with Section 1850) of Chapter 21 of Division 1.1.

36 251. For purposes of Chapter 23 (commencing with Section
37 2300) of the new General Corporation Law, in the case of any
38 subject institution existing on January 1, 1979:

1 (a) The term “new law” shall mean the new General
2 Corporation Law, subject, however, to the provisions of Section
3 101 of the revised Banking Law.

4 (b) The term “prior law” shall mean the prior General
5 Corporation Law, subject, however, to the provisions of Section
6 101 of the prior Banking Law.

7 (c) The term “effective date” shall mean January 1, 1979.

8 252. (a) Sections 600 and 600.2 of the revised Banking Law
9 shall not apply to any subject institution existing on January 1,
10 1979, unless and until an amendment of the articles of such subject
11 institution is filed with the Secretary of State pursuant to Section
12 2302 of the new General Corporation Law.

13 (b) An amendment of the articles of a subject institution existing
14 on January 1, 1979, which is filed with the Secretary of State
15 pursuant to Section 2302 of the new General Corporation Law
16 may be adopted by approval of the board alone in accordance
17 with the second sentence of Section 2302 of the new General
18 Corporation Law, notwithstanding the fact that such amendment
19 changes such articles to conform to the provisions of Sections 600
20 and 600.2 of the revised Banking Law.

21 (c) Neither Article 6 (commencing with Section 690), Chapter
22 5 of the revised Banking Law nor Section 904 of the new General
23 Corporation Law shall apply to an amendment of the articles of
24 a subject institution existing on January 1, 1979, which is filed
25 with the Secretary of State pursuant to Section 2302 of the new
26 General Corporation Law on account of the fact that such
27 amendment conforms such articles to the provisions of Section
28 600.2 of the revised Banking Law.

29 253. In case the board of a subject institution has, prior to
30 January 1, 1979, adopted a resolution levying an assessment on
31 the common shares of such subject institution in accordance with
32 an order issued by the commissioner pursuant to Section 661 of
33 the prior Banking Law:

34 (a) If the assessment has, prior to January 1, 1979, become a
35 lien on the common shares in accordance with Section 2704 of the
36 prior General Corporation Law, the assessment shall be collected
37 pursuant to the prior General Corporation Law:

38 (b) Otherwise, the resolution shall be deemed to be rescinded
39 on January 1, 1979.

1 254. Article 3 (commencing with Section 640), Chapter 5 of
 2 the revised Banking Law applies to any distribution to its
 3 shareholders made after January 1, 1979, by a subject institution
 4 existing on January 1, 1979, except that any such distribution
 5 effected pursuant to a contract for the purchase or redemption of
 6 shares entered into by such subject institution prior to January 1,
 7 1979, may be made if permissible under the applicable provisions
 8 of the revised Banking Law and the new General Corporation Law
 9 or under the applicable provisions of the prior Banking Law and
 10 the prior General Corporation Law in effect at the time such
 11 contract was entered into.

12
 13 *CHAPTER 3. DEPARTMENT OF FINANCIAL INSTITUTIONS*

14
 15 *Article 1. General Provisions*

16
 17 300. (a) In this section:

18 (1) “Business and industrial development corporation” means
 19 a corporation licensed under Division 15 (commencing with
 20 Section 31000).

21 (2) “Payment instrument” has the same meaning as set forth
 22 in Section 33059.

23 (3) “Traveler’s check” has the same meaning as set forth in
 24 Section 1803.

25 (b) There is in the state government, in the Business,
 26 Transportation and Housing Agency, a Department of Financial
 27 Institutions which has charge of the execution of, among other
 28 laws, the laws of this state relating to any of the following: (1)
 29 banks or trust companies or the banking or trust business; (2)
 30 savings associations or the savings association business; (3) credit
 31 unions or the credit union business; (4) persons who engage in
 32 the business of receiving money for transmission to foreign nations
 33 or such business; (5) issuers of traveler’s checks or the traveler’s
 34 check business; (6) issuers of payment instruments or the payment
 35 instrument business; (7) business and industrial development
 36 corporations or the business and industrial development
 37 corporation business, or (8) insurance premium finance agencies
 38 or the insurance premium finance business.

39 301. This chapter is applicable to this division, Division 1.1
 40 (commencing with Section 1000), Division 1.2 (commencing with

1 *Section 2000), Division 1.6 (commencing with Section 4800),*
2 *Division 5 (commencing with Section 14000), Division 7*
3 *(commencing with Section 18000), and Division 15 (commencing*
4 *with Section 31000).*

5
6 *Article 2. Commissioner of Financial Institutions*
7

8 *320. The chief officer of the Department of Financial*
9 *Institutions is the Commissioner of Financial Institutions. The*
10 *Commissioner of Financial Institutions is the head of the*
11 *department and, except as otherwise provided in this code, is*
12 *subject to the provisions of the Government Code relating to*
13 *department heads, but need not reside in Sacramento.*

14 *321. As of the operative date of this section:*

15 *(a) In this section, “order” means any approval, consent,*
16 *authorization, exemption, denial, prohibition, requirement, or*
17 *other administrative action, applicable to a specific case.*

18 *(b) The office of the Superintendent of Banks and the State*
19 *Banking Department are abolished. All powers, duties,*
20 *responsibilities, and functions of the Superintendent of Banks and*
21 *the State Banking Department are transferred to the Commissioner*
22 *of Financial Institutions and the Department of Financial*
23 *Institutions, respectively. The Commissioner of Financial*
24 *Institutions and the Department of Financial Institutions succeed*
25 *to all the rights and property of the Superintendent of Banks and*
26 *the State Banking Department, respectively; the Commissioner of*
27 *Financial Institutions and the Department of Financial Institutions*
28 *are subject to all the debts and liabilities of the Superintendent of*
29 *Banks and the State Banking Department, respectively, as if the*
30 *Commissioner of Financial Institutions and the Department of*
31 *Financial Institutions had incurred them. Any action or proceeding*
32 *by or against the Superintendent of Banks or the State Banking*
33 *Department may be prosecuted to judgment, which shall bind the*
34 *Commissioner of Financial Institutions or the Department of*
35 *Financial Institutions, respectively, or the Commissioner of*
36 *Financial Institutions or the Department of Financial Institutions*
37 *may be proceeded against or substituted in place of the*
38 *Superintendent of Banks or the State Banking Department,*
39 *respectively. References in the Constitution of the State of*
40 *California or in any statute or regulation to the Superintendent of*

1 Banks or to the State Banking Department mean the Commissioner
2 of Financial Institutions or the Department of Financial
3 Institutions, respectively. All agreements entered into with, and
4 orders and regulations issued by, the Superintendent of Banks or
5 the State Banking Department shall continue in effect as if the
6 agreements were entered into with, and the orders and regulations
7 were issued by, the Commissioner of Financial Institutions or the
8 Department of Financial Institutions, respectively.

9 (c) The office of the Savings and Loan Commissioner and the
10 Department of Savings and Loan are abolished. All powers, duties,
11 responsibilities, and functions of the Savings and Loan
12 Commissioner and the Department of Savings and Loan are
13 transferred to the Commissioner of Financial Institutions and the
14 Department of Financial Institutions, respectively. The
15 Commissioner of Financial Institutions and the Department of
16 Financial Institutions succeed to all the rights and property of the
17 Savings and Loan Commissioner and the Department of Savings
18 and Loan, respectively; the Commissioner of Financial Institutions
19 and the Department of Financial Institutions are subject to all the
20 debts and liabilities of the Savings and Loan Commissioner and
21 the Department of Savings and Loan, respectively, as if the
22 Commissioner of Financial Institutions and the Department of
23 Financial Institutions had incurred them. Any action or proceeding
24 by or against the Savings and Loan Commissioner or the
25 Department of Savings and Loan may be prosecuted to judgment,
26 which shall bind the Commissioner of Financial Institutions or
27 the Department of Financial Institutions, respectively, or the
28 Commissioner of Financial Institutions or the Department of
29 Financial Institutions may be proceeded against or substituted in
30 place of the Savings and Loan Commissioner or the Department
31 of Savings and Loan, respectively. References in the Constitution
32 of the State of California or in any statute or regulation to the
33 Savings and Loan Commissioner or to the Department of Savings
34 and Loan mean the Commissioner of Financial Institutions or the
35 Department of Financial Institutions, respectively. All agreements
36 entered into with, and orders and regulations issued by, the Savings
37 and Loan Commissioner or the Department of Savings and Loan
38 shall continue in effect as if the agreements were entered into with,
39 and the orders and regulations were issued by, the Commissioner

1 of Financial Institutions or the Department of Financial
2 Institutions.

3 (d) All powers, duties, responsibilities, and functions of the
4 Commissioner of Corporations and the Department of
5 Corporations with respect to credit unions, the credit union
6 business, industrial loan companies, or the industrial loan business
7 are transferred to the Commissioner of Financial Institutions and
8 the Department of Financial Institutions, respectively. The
9 Commissioner of Financial Institutions and the Department of
10 Financial Institutions succeed to all the rights and property of the
11 Commissioner of Corporations and the Department of
12 Corporations, respectively, with respect to credit unions, the credit
13 union business, industrial loan companies, or the industrial loan
14 business; the Commissioner of Financial Institutions and the
15 Department of Financial Institutions are subject to all the debts
16 and liabilities of the Commissioner of Corporations and the
17 Department of Corporations, respectively, with respect to credit
18 unions, the credit union business, industrial loan companies, or
19 the industrial loan business, as if the Commissioner of Financial
20 Institutions and the Department of Financial Institutions had
21 incurred them. Any action or proceeding by or against the
22 Commissioner of Corporations or the Department of Corporations
23 with respect to credit unions, the credit union business, industrial
24 loan companies, or the industrial loan business may be prosecuted
25 to judgment, which shall bind the Commissioner of Financial
26 Institutions or the Department of Financial Institutions,
27 respectively, or the Commissioner of Financial Institutions or the
28 Department of Financial Institutions may be proceeded against
29 or substituted in place of the Commissioner of Corporations or
30 the Department of Corporations, respectively. References in the
31 Constitution of the State of California or any statute or regulation
32 to the Commissioner of Corporations or to the Department of
33 Corporations with respect to credit unions, the credit union
34 business, industrial loan companies, or the industrial loan business
35 mean the Commissioner of Financial Institutions or the Department
36 of Financial Institutions, respectively. All agreements entered into
37 with, and orders and regulations issued by, the Commissioner of
38 Corporations or the Department of Corporations in the exercise
39 of authority under any law relating to credit unions, the credit
40 union business, industrial loan companies, or the industrial loan

1 *business, shall continue in effect as if the agreements were entered*
2 *into with, and the orders and regulations were issued by, the*
3 *Commissioner of Financial Institutions or the Department of*
4 *Financial Institutions.*

5 322. *The commissioner is appointed by the Governor, and*
6 *holds office at the pleasure of the Governor. The appointment of*
7 *the commissioner is subject to confirmation by the Senate.*

8 323. *The commissioner shall be a citizen of the United States*
9 *and a resident of the state for at least three years prior to his or*
10 *her appointment. The commissioner shall be chosen solely for his*
11 *or her qualifications and fitness to perform the duties of his or her*
12 *office.*

13 324. *The annual salary of the commissioner is provided for by*
14 *Chapter 6 (commencing with Section 11550) of Part 1 of Division*
15 *3 of Title 2 of the Government Code.*

16 325. *Before entering upon the duties of his or her office, the*
17 *commissioner shall take and subscribe to the constitutional oath*
18 *of office and file the same with the Secretary of State.*

19 326. *The commissioner is responsible for the performance of*
20 *all duties, the exercise of all powers and jurisdiction, and the*
21 *assumption and discharge of all responsibilities vested by law in*
22 *the department. The commissioner has and may exercise all the*
23 *powers necessary or convenient for the administration and*
24 *enforcement of, among other laws, the laws described in Section*
25 *300. The commissioner may issue such rules and regulations*
26 *consistent with law as he or she may deem necessary or advisable*
27 *in executing the powers, duties, and responsibilities of the*
28 *department.*

29 327. (a) *The commissioner shall apply the Interagency*
30 *Guidance on Nontraditional Mortgage Product Risks issued in*
31 *September 2006 and the Statement on Subprime Mortgage Lending*
32 *issued in June 2007 by the Office of the Comptroller of the*
33 *Currency, the Board of Governors of the Federal Reserve System,*
34 *the Federal Deposit Insurance Corporation, the Office of Thrift*
35 *Supervision, and the National Credit Union Administration to*
36 *state-regulated financial institutions, including, but not limited to,*
37 *privately insured, state-chartered credit unions.*

38 (b) *The commissioner may issue emergency and final regulations*
39 *to clarify the application of this section as soon as possible.*

1 (c) A bank or credit union to which the commissioner applies
2 the documents described in subdivision (a) shall adopt and adhere
3 to policies and procedures that are reasonably intended to achieve
4 the objectives set forth in those documents.

5 328. (a) The commissioner may make the agreements that he
6 or she deems necessary or appropriate in exercising his or her
7 powers.

8 (b) (1) The agreements authorized under subdivision (a) may
9 include, but are not limited to, agreements with agencies of this
10 state, of other states of the United States, of the United States, or
11 of foreign nations that regulate financial institutions, relating to
12 examinations of banks, savings associations, credit unions,
13 industrial loan companies, and other matters.

14 (2) Any agreement with a government agency that regulates
15 financial institutions is exempt from the advertising and competitive
16 bidding requirements of the Public Contract Code.

17 329. (a) For purposes of this section, the following definitions
18 apply:

19 (1) “Applicable law” means:

20 (A) With respect to any bank, Division 1.6 (commencing with
21 Section 4800), and any of the following provisions:

22 (i) Article 6 (commencing with Section 405) of Chapter 3.

23 (ii) Article 3 (commencing with Section 1130) of Chapter 5 of
24 Division 1.1.

25 (iii) Chapter 6 (commencing with Section 1200) of Division 1.1.

26 (iv) Chapter 10 (commencing with Section 1320) of Division
27 1.1.

28 (v) Chapter 14 (commencing with Section 1460) of Division
29 1.1.

30 (vi) Article 1 (commencing with Section 1530) of Chapter 15
31 of Division 1.1.

32 (vii) Chapter 16 (commencing with Section 1550) of Division
33 1.1.

34 (viii) Chapter 20 (commencing with Section 1750) of Division
35 1.1.

36 (ix) Section 456.

37 (x) Section 457.

38 (xi) Section 459.

39 (xii) Section 460.

40 (xiii) Section 760.

- 1 (xiv) Chapter 21 (commencing with Section 1850) of Division
2 1.1.
- 3 (xv) Chapter 18 (commencing with Section 1660) of Division
4 1.1.
- 5 (xvi) Chapter 19 (commencing with Section 1670) of Division
6 1.1.
- 7 (B) With respect to any savings association, any provision of
8 Division 1.6 (commencing with Section 4800) and Division 2
9 (commencing with Section 5000).
- 10 (C) With respect to any issuer of traveler's checks, any provision
11 of Chapter 7 (commencing with Section 2120) of Division 1.2.
- 12 (D) With respect to any insurance premium finance company,
13 any provision of Division 7 (commencing with Section 18000).
- 14 (E) With respect to any business and development corporation,
15 any provision of Division 15 (commencing with Section 31000).
- 16 (F) With respect to any credit union, any of the following
17 provisions:
- 18 (i) Section 14252.
- 19 (ii) Section 14253.
- 20 (iii) Section 14255.
- 21 (iv) Article 4 (commencing with Section 14350) of Chapter 3
22 of Division 5.
- 23 (v) Section 14401.
- 24 (vi) Section 14404.
- 25 (vii) Section 14408, only as that section applies to gifts to
26 directors, volunteers, and employees, and the related family or
27 business interests of the directors, volunteers, and employees.
- 28 (viii) Section 14409.
- 29 (ix) Section 14410.
- 30 (x) Article 5 (commencing with Section 14600) of Chapter 4 of
31 Division 5.
- 32 (xi) Article 6 (commencing with Section 14650) of Chapter 4
33 of Division 5, excluding subdivision (a) of Section 14651.
- 34 (xii) Section 14803.
- 35 (xiii) Section 14851.
- 36 (xiv) Section 14858.
- 37 (xv) Section 14860.
- 38 (xvi) Section 14861.
- 39 (xvii) Section 14863.

1 (G) *With respect to any person licensed to transmit money*
2 *abroad, any provision of Chapter 1 (commencing with Section*
3 *2000) of Division 1.2.*

4 (2) *“Licensee” means any bank, savings association, credit*
5 *union, transmitter of money abroad, issuer of payment instruments,*
6 *issuer of traveler’s checks, insurance premium finance agency, or*
7 *business and industrial development corporation that is authorized*
8 *by the commissioner to conduct business in this state.*

9 (b) *Notwithstanding any other provision of this code that applies*
10 *to a licensee or a subsidiary of a licensee, after notice and an*
11 *opportunity to be heard, the commissioner may, by order that shall*
12 *include findings of fact which incorporates a determination made*
13 *in accordance with subdivision (e), levy civil penalties against any*
14 *licensee or any subsidiary of a licensee who has violated any*
15 *provision of applicable law, any order issued by the commissioner,*
16 *any written agreement between the commissioner and the licensee*
17 *or subsidiary of the licensee, or any condition of any approval*
18 *issued by the commissioner. Notwithstanding any other provision*
19 *of law, neither the commissioner nor any employee of the*
20 *department shall disclose or permit the disclosure of any record,*
21 *record of any action, or information contained in a record of any*
22 *action, taken by the commissioner under the provisions of this*
23 *section, unless the action was taken pursuant to paragraph (2) of*
24 *subdivision (b), to persons other than federal or state government*
25 *employees who are authorized by statute to obtain the records in*
26 *the performance of their official duties, unless the disclosure is*
27 *authorized or requested by the affected licensee or the affected*
28 *subsidiary of the licensee. The commissioner shall have the sole*
29 *authority to bring any action with respect to a violation of*
30 *applicable law subject to a penalty imposed under this section.*

31 *Except as provided in paragraphs (1) and (2), any penalty*
32 *imposed by the commissioner may not exceed one thousand dollars*
33 *(\$1,000) a day, provided that the aggregate penalty of all offenses*
34 *in any one action against any licensee or subsidiary of a licensee*
35 *shall not exceed fifty thousand dollars (\$50,000).*

36 (1) *If the commissioner determines that any licensee or*
37 *subsidiary of the licensee has recklessly violated any applicable*
38 *law, any order issued by the commissioner, any provision of any*
39 *written agreement between the commissioner and the licensee or*
40 *subsidiary, or any condition of any approval issued by the*

1 commissioner; the commissioner may impose a penalty not to
2 exceed five thousand dollars (\$5,000) per day, provided that the
3 aggregate penalty of all offenses in an action against any licensee
4 or subsidiary of a licensee shall not exceed seventy-five thousand
5 dollars (\$75,000).

6 (2) If the commissioner determines that any licensee or
7 subsidiary of the licensee has knowingly violated any applicable
8 law, any order issued by the commissioner, any provision of any
9 written agreement between the commissioner and the licensee or
10 subsidiary, or any condition of any approval issued by the
11 commissioner, the commissioner may impose a penalty not to
12 exceed ten thousand dollars (\$10,000) per day, provided that the
13 aggregate penalty of all offenses in an action against any licensee
14 or subsidiary of a licensee shall not exceed 1 percent of the total
15 assets of the licensee or subsidiary of a licensee subject to the
16 penalty.

17 (c) Nothing in this section shall be construed to impair or
18 impede the commissioner from pursuing any other administrative
19 action allowed by law.

20 (d) Nothing in this section shall be construed to impair or
21 impede the commissioner from bringing an action in court to
22 enforce any law or order he or she has issued, including orders
23 issued under this section. Nothing in this section shall be construed
24 to impair or impede the commissioner from seeking any other
25 damages or injunction allowed by law.

26 (e) In determining the amount and the appropriateness of
27 initiating a civil money penalty under subdivision (b), the
28 commissioner shall consider all of the following:

29 (1) Evidence that the violation or practice or breach of duty
30 was intentional or was committed with a disregard of the law or
31 with a disregard of the consequences to the institution.

32 (2) The duration and frequency of the violations, practices, or
33 breaches of duties.

34 (3) The continuation of the violations, practices, or breaches
35 of duty after the licensee or subsidiary of the licensee was notified,
36 or, alternatively, its immediate cessation and correction.

37 (4) The failure to cooperate with the commissioner in effecting
38 early resolution of the problem.

- 1 (5) Evidence of concealment of the violation, practice, or breach
2 of duty or, alternatively, voluntary disclosure of the violation,
3 practice, or breach of duty.
- 4 (6) Any threat of loss, actual loss, or other harm to the
5 institution, including harm to the public confidence in the
6 institution, and the degree of that harm.
- 7 (7) Evidence that a licensee or subsidiary of a licensee received
8 financial gain or other benefit as a result of the violation, practice,
9 or breach of duty.
- 10 (8) Evidence of any restitution paid by a licensee or subsidiary
11 of a licensee of losses resulting from the violation, practice, or
12 breach of duty.
- 13 (9) History of prior violations, practices, or breaches of duty,
14 particularly where they are similar to the actions under
15 consideration.
- 16 (10) Previous criticism of the institution for similar actions.
- 17 (11) Presence or absence of a compliance program and its
18 effectiveness.
- 19 (12) Tendency to engage in violations of law, unsafe or unsound
20 banking practices, or breaches of duties.
- 21 (13) The existence of agreements, commitments, orders, or
22 conditions imposed in writing intended to prevent the violation,
23 practice, or breach of duty.
- 24 (14) Whether the violation, practice, or breach of duty causes
25 quantifiable, economic benefit or loss to the licensee or the
26 subsidiary of the licensee. In those cases, removal of the benefit
27 or recompense of the loss usually will be insufficient, by itself, to
28 promote compliance with the applicable law, order, or written
29 agreement. The penalty amount should reflect a remedial purpose
30 and should provide a deterrent to future misconduct.
- 31 (15) Other factors as the commissioner may, in his or her
32 opinion, consider relevant to assessing the penalty or establishing
33 the amount of the penalty.
- 34 (f) The amounts collected under this section shall be deposited
35 in the appropriate fund of the department. For purposes of this
36 subdivision, the term “appropriate fund” means the fund to which
37 the annual assessments of fined licensees, or the parent licensee
38 of the fined subsidiary, are credited.

1 330. *The authority vested in the Superintendent of Banks under*
2 *subdivision (2) of Section 1 of Article XV of the California*
3 *Constitution is delegated to the commissioner.*

4 331. *Notwithstanding any other provision of law, the*
5 *commissioner may adopt and implement any method of accepting*
6 *electronic filings of applications, reports, or other matters, which,*
7 *in the opinion of the commissioner, is secure. Any method of*
8 *electronic filing chosen by the commissioner shall include a method*
9 *to verify the identity of the person making the filing. The*
10 *verification shall be deemed to satisfy all other verifications*
11 *required by this division, and shall have the same force and effect*
12 *as the use of manual signatures.*

13 332. (a) (1) *In this section, “federal law” includes, but is not*
14 *limited to, the United States Constitution, any federal statute, any*
15 *federal court decision, and any regulation, circular, bulletin,*
16 *interpretation, decision, order, and waiver issued by a federal*
17 *agency.*

18 (2) *The definitions set forth in Section 1750 apply to this section.*

19 (b) (1) *Notwithstanding any other provision of law, except as*
20 *provided in subdivision (c), if the commissioner finds that any*
21 *provision of federal law applicable to national banking*
22 *associations doing business in this state is substantively different*
23 *from the provisions of this code applicable to banks organized*
24 *under the laws of this state, the commissioner may by regulation*
25 *make that provision of federal law applicable to banks organized*
26 *under the laws of this state.*

27 (2) *If the commissioner finds that any provision of federal law*
28 *applicable to foreign (other nation) banks with respect to federal*
29 *agencies or federal branches in this state is substantively different*
30 *from the provisions of this code applicable to foreign (other nation)*
31 *banks with respect to agencies or branch offices licensed by the*
32 *commissioner under Chapter 20 (commencing with Section 1750)*
33 *of Division 1.1, the commissioner may by regulation make that*
34 *provision of federal law applicable to foreign (other nation) banks*
35 *with respect to agencies or branch offices licensed by the*
36 *commissioner under Chapter 20 commencing with Section 1750)*
37 *of Division 1.1.*

38 (c) (1) *Section 11343.4 and Article 5 (commencing with Section*
39 *11346) and Article 6 (commencing with Section 11349) of Chapter*

1 3.5 of Part 1 of Division 3 of Title 2 of the Government Code do
2 not apply to any regulation adopted under subdivision (b).

3 (2) The commissioner shall file any regulation adopted pursuant
4 to subdivision (b), together with a citation to this section as
5 authority for the adoption and a citation to the provisions of federal
6 law made applicable by the regulation, with the Office of
7 Administrative Law for filing with the Secretary of State and
8 publication in the California Code of Regulations.

9 (3) Any regulation adopted under subdivision (b) shall become
10 effective on the date when it is filed with the Secretary of State
11 unless the commissioner prescribes a later date in the regulation
12 or in a written instrument filed with the regulation.

13 (4) Any regulation adopted under subdivision (b) shall expire
14 at 12 p.m. on December 31 of the year following the calendar year
15 in which it becomes effective.

16 (5) Any regulation adopted pursuant to subdivision (b) shall be
17 subject to the following restrictions:

18 (A) The commissioner shall not renew or reinstate the regulation
19 adopted pursuant to subdivision (b).

20 (B) The commissioner shall not adopt a new regulation pursuant
21 to subdivision (b), to address the same conformity issue that was
22 addressed by the regulation that expired pursuant to subdivision
23 (c).

24 (d) The commissioner may adopt regulations pursuant to
25 subdivision (b) that are exempt from the expiration and restrictions
26 of subdivision (c) if the regulations are adopted in compliance
27 with all provisions of Chapter 3.5 (commencing with Section
28 11340) of Part 1 of Division 3 of the Government Code, including
29 those listed in paragraph (1) of subdivision (c).

30 333. The powers of supervision and examination of all licensees
31 are vested in the commissioner.

32 334. The commissioner may promulgate or waive such rules
33 and regulations as may be reasonable or necessary to carry out
34 his or her duties and responsibilities.

35 335. (a) The commissioner, whenever in his or her opinion
36 such action is necessary or appropriate to carry out his or her
37 duties, may call a meeting of the board of directors of a licensee.

38 (b) A meeting of the board of a licensee called by the
39 commissioner shall be held upon four days' notice by first class
40 mail or 24 hours' notice delivered personally or by telephone. The

1 notice shall be given by the commissioner or, if the commissioner
2 so orders, by an officer of the licensee.

3 (c) A meeting of the board of a licensee called by the
4 commissioner shall be held at a place within this state as may be
5 designated by the commissioner and specified in the notice of the
6 meeting.

7 (d) The expenses of a meeting of the board of a licensee called
8 by the commissioner shall be paid by the licensee.

9 336. The commissioner may, at any time, require a licensee to
10 write down any asset held by the licensee to a valuation that will
11 represent the asset's then fair market value.

12

13 Article 3. Deputies and Employees

14

15 350. The commissioner shall appoint a chief deputy who holds
16 office at the pleasure of the commissioner. The annual salary of
17 the chief deputy shall be fixed by the commissioner with the
18 approval of the Director of Finance. The chief deputy shall have
19 the same qualifications as the commissioner. The commissioner
20 shall also appoint two deputies, one to serve in the City and County
21 of San Francisco and one to serve in the City of Los Angeles.

22 351. The Chief Officer of the Division of Credit Unions is the
23 Deputy Commissioner of Financial Institutions for the Division
24 of Credit Unions. The Deputy Commissioner of Financial
25 Institutions for the Division of Credit Unions shall administer the
26 laws of this state relating to credit unions or the credit union
27 business under the direction of the commissioner. The Deputy
28 Commissioner of Financial Institutions for the Division of Credit
29 Unions shall be appointed by the Governor and shall hold office
30 at the pleasure of the Governor. The Deputy Commissioner of
31 Financial Institutions shall receive an annual salary as fixed by
32 the Governor.

33 352. The commissioner may employ deputies in addition to the
34 chief deputy, and examiners, appraisers, technical assistants,
35 investigators, administrative assistants, clerks, and other employees
36 that he or she may need to discharge in a proper manner the duties
37 imposed upon him or her by law. He or she shall prescribe their
38 duties and fix their compensation in accordance with classifications
39 made by the State Personnel Board. The commissioner may also,

1 *at those times and on those terms as may be approved by the*
2 *Governor, employ those attorneys as he or she may need.*

3 *353. Before entering upon the duties of his office each deputy*
4 *and examiner shall take and subscribe to the constitutional oath*
5 *of office and file the same with the Secretary of State.*

6 *354. The commissioner may require, at any time, of any deputy,*
7 *examiner, or other employee of the department, an official bond*
8 *in such amount as the commissioner may deem necessary. The*
9 *premium for bonds required by the commissioner shall be an*
10 *expense of the department.*

11 *355. Neither the commissioner nor any deputy or employee of*
12 *the department shall do or be any of the following with respect to*
13 *any bank, savings association, credit union, or industrial loan*
14 *company supervised by the department:*

15 *(a) Be indebted, directly or indirectly, as borrower, endorser,*
16 *surety, or guarantor to any such bank, savings association, credit*
17 *union, or industrial loan company.*

18 *(b) Be an officer, director, or employee of any such bank,*
19 *savings association, credit union, or industrial loan company.*

20 *(c) Own or deal in directly or indirectly, the shares or*
21 *obligations of any such bank, savings association, credit union,*
22 *or industrial loan company.*

23 *(d) Be interested in or, directly or indirectly, receive from any*
24 *such bank, savings association, credit union, or industrial loan*
25 *company or any officer, director, or employee thereof, any salary,*
26 *fee, compensation, or other valuable thing by way of gift, credit,*
27 *compensation for services, or otherwise. However, this subdivision*
28 *does not prohibit any person from being interested in or directly*
29 *or indirectly receiving (1) anything which is expressly excluded*
30 *from a definition of “gift” or “honorarium” in the Political Reform*
31 *Act of 1974 (Title 9 (commencing with Section 81000) of the*
32 *Government Code) or in regulations issued under the Political*
33 *Reform Act of 1974 by the Fair Political Practices Commission*
34 *or (2) anything which, if received by the commissioner, would*
35 *constitute a gift or honorarium within the meaning of the Political*
36 *Reform Act of 1974 or regulations issued under the Political*
37 *Reform Act of 1974 by the Fair Political Practices Commission*
38 *but which the commissioner would not be prohibited from receiving*
39 *under the Political Reform Act of 1974 or regulations issued under*

1 *the Political Reform Act of 1974 by the Fair Political Practices*
2 *Commission.*

3 *(e) Be interested in or engage in the negotiation of any loan to,*
4 *obligation of, or accommodation for another person to or with*
5 *any such bank, savings association, credit union, or industrial*
6 *loan company.*

7 *Notwithstanding the foregoing the commissioner and any deputy*
8 *or employee may have and maintain one or more deposit or similar*
9 *accounts in any bank, savings association, credit union, or*
10 *industrial loan company in this state and may maintain with any*
11 *bank, savings association, credit union, or industrial loan company*
12 *in this state a loan which was not obtained in violation of this*
13 *section if the person reports the loan in writing to the department*
14 *within 30 days after the person commences his or her term of*
15 *appointment or employment with the department and if the loan*
16 *is not renewed, renegotiated, extended, or otherwise modified on*
17 *or after July 1, 1997.*

18 *A violation of this section by any person shall constitute sufficient*
19 *grounds for his or her removal or discharge.*

20 *356. If the commissioner is unable to perform his or her duties*
21 *for more than 30 consecutive days or if the office of the*
22 *commissioner becomes vacant, the chief deputy shall have all the*
23 *powers and duties of the commissioner until the return or recovery*
24 *of the commissioner, or, in case of a vacancy, until a new*
25 *commissioner is appointed by the Governor and qualifies to hold*
26 *office.*

27 *357. If a deputy commissioner or any examiner has knowledge*
28 *of the insolvency or unsafe condition of any licensee and willfully*
29 *fails to report that fact to the commissioner in writing, he or she*
30 *is guilty of a felony.*

31

32

Article 4. Administration of the Department

33

34 *370. The commissioner may have an office in the City of*
35 *Sacramento, the City of Los Angeles, the City of San Diego, the*
36 *City and County of San Francisco, or any other location in the*
37 *state that he or she considers appropriate. The commissioner shall*
38 *provide at the expense of the department such office space,*
39 *furniture, and equipment as may be necessary or convenient for*
40 *the transaction of the business of the department.*

1 371. *There is in the Department of Financial Institutions, the*
2 *Division of Credit Unions. The Division of Credit Unions has*
3 *charge of the execution of the laws of this state relating to credit*
4 *unions and to the credit union business.*

5 372. *The department may expend moneys in accordance with*
6 *law for the necessary travel expenses of officers and employees of*
7 *the department while traveling in the line of their duties either*
8 *within or without the State.*

9 373. *The commissioner shall adopt and keep an official seal.*
10 *Papers executed by the commissioner in his or her official capacity*
11 *pursuant to law and bearing the seal, or copies thereof certified*
12 *by him or her, shall be received in evidence in like manner as the*
13 *original and may be recorded in the same manner and with the*
14 *same effect as a deed regularly acknowledged.*

15 374. (a) *Whenever it is necessary for the commissioner to*
16 *approve any instrument and to affix his or her official seal thereto,*
17 *the commissioner shall charge a fee of twenty-five dollars (\$25)*
18 *therefor.*

19 (b) *Whenever it is proper for the department to furnish a copy*
20 *of any paper that has been filed therein and to certify to the paper,*
21 *the commissioner may charge twenty-five cents (\$0.25) for each*
22 *page copied.*

23 (c) *Whenever the commissioner is required or requested to*
24 *certify copies of documents, the commissioner may charge a fee*
25 *of twenty-five dollars (\$25) for certifying the copied documents*
26 *and for affixing his or her official seal.*

27 375. *Official reports made by the commissioner and verified*
28 *reports of an examination made by the commissioner, exclusively*
29 *or in conjunction with or with assistance from any agency of the*
30 *United States, of a state of the United States, or of a foreign nation*
31 *are prima facie evidence of the facts stated in the reports for all*
32 *purposes.*

33 376. *At least once each month, the commissioner shall issue*
34 *and disseminate as the commissioner deems appropriate a bulletin*
35 *containing the following information:*

36 (a) *Information regarding any of the following actions taken*
37 *since issuance of the previous bulletin:*

38 (1) *The filing, approval, or denial under Chapter 1 (commencing*
39 *with Section 1000) of Division 1.1 of an application for authority*

1 to organize a California state bank, or the issuance under Chapter
2 3 of a certificate of authority to a California state bank.

3 (2) The filing, approval, or denial under Article 1 (commencing
4 with Section 5400) of Chapter 2 of Division 2 of an application
5 for the issuance of an organizing permit for the organization of a
6 California savings association, or for the issuance under Article
7 2 (commencing with Section 5500) of Chapter 2 of Division 2 of
8 a certificate of authority to a California savings association.

9 (3) The filing, approval, or denial under Article 2 (commencing
10 with Section 14150) of Chapter 2 of Division 5 of an application
11 for a certificate to act as a credit union, or the issuance of a
12 certificate to engage in the business of a credit union.

13 (4) The filing, approval, or denial under Division 1.2
14 (commencing with Section 2000), Division 7 (commencing with
15 Section 18000), or Division 15 (commencing with Section 31000)
16 of an application for a license to engage in business, or the
17 issuance under any of those laws of a license to engage in business.

18 (5) The filing, approval, or denial under Chapter 20
19 (commencing with Section 1750) of Division 1.1 of an application
20 by a foreign (other nation) bank to establish its first office of any
21 particular class (as determined under Section 1753) in this state,
22 or the issuance under that chapter of a license in connection with
23 the establishment of such an office.

24 (6) The filing, approval, or denial under Division 1.6
25 (commencing with Section 4800) of an application for approval
26 of a sale, merger, or conversion.

27 (7) The filing, approval, or denial under Article 6 (commencing
28 with Section 5700) of Chapter 2 of Division 2 of an application
29 for approval of a conversion of a federal savings association into
30 a state savings association, or the filing of a federal charter of a
31 state savings association that has converted to a federal savings
32 association.

33 (8) The filing, approval, or denial under Article 7 (commencing
34 with Section 5750) of Chapter 2 of Division 2 of an application
35 for approval of a reorganization, merger, consolidation, or transfer
36 of assets of a state savings association.

37 (9) The filing, approval, or denial under Chapter 9 (commencing
38 with Section 15200) of Division 5 of an application for approval
39 of a merger, dissolution, or conversion of a credit union.

1 (10) *The taking of possession of the property and business of a*
2 *California state bank, savings association, credit union, or person*
3 *licensed by the commissioner under any of the laws cited in*
4 *paragraph (2).*

5 **(b)** *Other information as the commissioner deems appropriate.*

6 377. *Notwithstanding any other provision of this code,*
7 *whenever any provision of this division requires the pledge of*
8 *securities to be deposited with the Treasurer, to insure the*
9 *performance of any act or duty, the securities after first being*
10 *approved by the commissioner and upon the written order of the*
11 *commissioner, shall be deposited with the Treasurer. The*
12 *Treasurer, with the consent of the owner of the securities deposited*
13 *or to be deposited with the Treasurer, may place the securities in*
14 *the custody of a qualified trust company or bank in the same*
15 *manner and under the same conditions provided in Article 3*
16 *(commencing with Section 16550) of Chapter 4 of Part 2 of*
17 *Division 4 of Title 2 of the Government Code.*

18 378. *Whenever the commissioner is notified of or discovers a*
19 *violation of the state law punishable by criminal penalties, he or*
20 *she shall promptly advise the Attorney General.*

21 379. **(a)** *For the purposes of this section the following*
22 *definitions shall apply:*

23 **(1)** *“Control” has the meaning set forth in subdivision (b) of*
24 *Section 1250. “Control” also means the ownership of a subject*
25 *person by means of sole proprietorship, partnership, or by any*
26 *other similar means.*

27 **(2)** *“Controlling person” means a person who, directly or*
28 *indirectly, controls a subject person.*

29 **(3)** *“Subject person” means any of the following:*

30 **(A)** *A commercial bank, industrial bank, trust company, savings*
31 *association, or credit union incorporated under the laws of this*
32 *state.*

33 **(B)** *A person licensed by the commissioner under Chapter 1*
34 *(commencing with Section 2000) of Division 1.2 to receive money*
35 *for transmission to foreign countries.*

36 **(C)** *A person authorized by the commissioner pursuant to*
37 *Section 2004 to act as an agent of a person licensed by the*
38 *commissioner to receive money for transmission to foreign*
39 *countries.*

1 (D) A person licensed by the commissioner pursuant to Division
2 7 (commencing with Section 18000) to transact business as a
3 premium finance agency.

4 (E) A person licensed by the commissioner pursuant to Division
5 15 (commencing with Section 31000) to transact business as a
6 business and industrial development corporation.

7 (F) A person licensed by the commissioner pursuant to Division
8 16 (commencing with Section 33000) to engage in the business of
9 selling payment instruments in this state issued by the licensee.

10 (G) A corporation incorporated under the laws of this state for
11 the purpose of engaging in, or that is authorized by the
12 commissioner to engage in, business pursuant to Article 1
13 (commencing with Section 1850) of Chapter 21 of Division 1.1.

14 (H) A foreign corporation that is licensed by the commissioner
15 pursuant to Article 1 (commencing with Section 1850) of Chapter
16 21 of Division 1.1 to maintain an office in this state and to transact
17 at that office business pursuant to Article 1 (commencing with
18 Section 1850) of Chapter 21 of Division 1.1.

19 (b) Notwithstanding any other provision of law, and subject to
20 subdivision (c), the commissioner may deliver, or cause to be
21 delivered, to local, state, or federal law enforcement agencies
22 fingerprints taken of any of the following:

23 (1) An applicant for employment with the department.

24 (2) A person licensed, or proposed to be licensed, as a subject
25 person.

26 (3) A director, officer, or employee of an existing or proposed
27 subject person.

28 (4) An existing or proposed controlling person of a subject
29 person.

30 (5) A director, officer, or employee of an existing or proposed
31 controlling person of a subject person.

32 (6) A director, officer, or employee of an existing or proposed
33 affiliate of a subject person.

34 (c) The authorization in subdivision (b) may only be used by
35 the department for the purpose of obtaining information regarding
36 an individual as to the existence and nature of the criminal record,
37 if any, of that individual relating to convictions, and to any arrest
38 for which the individual is released on bail or on his or her own
39 recognizance pending trial, for the commission or attempted
40 commission of a crime involving robbery, burglary, theft,

1 *embezzlement, fraud, forgery, bookmaking, receiving stolen*
2 *property, counterfeiting, or involving checks or credit cards or*
3 *using computers.*

4 *(d) No request shall be submitted pursuant to this section without*
5 *the written consent of the person affected.*

6 *(e) Any criminal history information obtained pursuant to this*
7 *section shall be confidential and no recipient shall disclose its*
8 *contents other than for the purpose for which it was acquired.*

9 *380. (a) The commissioner shall inform the Commissioner of*
10 *Corporations and other appropriate state and federal officials*
11 *charged with the regulation of financial institutions or securities*
12 *transactions of any enforcement actions, including, but not limited*
13 *to, civil or criminal actions, cease and desist orders, license or*
14 *authorization suspensions or revocations, or an open investigation.*

15 *(b) The commissioner shall inform the Commissioner of*
16 *Corporations and other appropriate state and federal officials*
17 *charged with the regulation of financial institutions or securities*
18 *transactions if it appears that any bank, bank holding company,*
19 *savings association, savings and loan holding company, credit*
20 *union, industrial loan company, industrial loan holding company,*
21 *or other licensee of the department is conducting its business in a*
22 *fraudulent, unsafe, unsound, or injurious manner, or has suffered*
23 *or will suffer substantial financial loss or damage, and it appears*
24 *to the commissioner that the information is relevant to the*
25 *regulatory activities of the other agency.*

26 *381. Chapter 5 (commencing with Section 11500) of Part 1 of*
27 *Division 3 of Title 2 of the Government Code does not apply to*
28 *hearings conducted by the department.*

29

30

Article 5. Financial Institutions Fund

31

32 *400. As of the operative date of this section, there is established*
33 *a Financial Institutions Fund in the State Treasury. Except as*
34 *otherwise provided in Division 5 (commencing with Section 14000),*
35 *all money collected or received by the commissioner under this*
36 *code shall be deposited with the Treasurer to the credit of the*
37 *Financial Institutions Fund.*

Article 6. State Banking Account

1
2
3 405. (a) *The commissioner shall annually collect pro rata*
4 *from the banks and trust companies under the supervision of the*
5 *department a fund in amount sufficient in the commissioner's*
6 *judgment to meet the expenses of the department in administering*
7 *laws relating to banks or trust companies or to the banking or*
8 *trust business that are not otherwise provided for and to provide*
9 *a reasonable reserve for contingencies.*

10 (b) *The amount of the annual assessment for the fund on any*
11 *bank or trust company shall not be less than five thousand dollars*
12 *(\$5,000). Above that minimum amount, except as otherwise*
13 *provided subdivision (c), the annual assessment shall not exceed*
14 *the sum of the products of a base assessment rate, or percentage*
15 *thereof, and segregated portions of its total resources, according*
16 *to the following table:*

17

18 Segregated Total Resources	Percentage of Base
19 (In Millions or Fractions Thereof)	Assessment Rate
20 First \$2	100.0
21 Next \$18	50.0
22 Next \$80	12.0
23 Next \$100	6.25
24 Next \$800	6.0
25 Next \$1,000	4.0
26 Next \$4,000	3.5
27 Next \$14,000	3.0
28 Next \$20,000	2.5
29 Excess over \$40,000	1.5

30

31 (c) (1) *For purposes of determining the annual assessment on*
32 *banks and trust companies that have one or more foreign (other*
33 *state) branch offices, the resources of foreign (other state) branch*
34 *offices shall be excluded from total resources, except that the*
35 *commissioner may order the resources of foreign (other state)*
36 *branch offices to be included in total resources if and to the extent*
37 *that it is necessary in the commissioner's judgment to meet the*
38 *expenses of the department on account of foreign (other state)*
39 *branch offices and a reasonable reserve for contingencies.*

1 (2) If the commissioner finds that a bank or trust company
2 allocated any resource to a foreign (other state) branch office for
3 the purpose, in whole or in part, of reducing its annual assessment,
4 the commissioner may, for purposes of calculating the annual
5 assessment on the bank or trust company, reallocate the resource
6 to the bank's or trust company's head office.

7 (d) The base assessment rate shall be set by the commissioner
8 from time to time at the commissioner's discretion, not to exceed
9 two dollars and twenty cents (\$2.20) per one thousand dollars
10 (\$1,000) of total resources.

11 406. The commissioner shall annually collect from national
12 banking associations and foreign (other state) banks operating
13 trust departments in this state an annual assessment to meet
14 expenses of the department, not exceeding one one-hundredth of
15 1 percent of the amount required by law to be deposited with the
16 Treasurer as surety for the faithful performance and execution of
17 all court and private trusts accepted by them.

18 407. Whenever the commissioner makes an assessment pursuant
19 to Section 405 or 406, the commissioner shall fix the date when
20 the assessment is due and payable and shall mail or otherwise
21 deliver to each bank and trust company assessed an invoice
22 showing the amount of its assessment and the date when the
23 assessment is due and payable.

24 408. The commissioner, in addition to the annual assessment,
25 shall collect from each bank authorized to engage in the trust
26 business, to defray the cost of examination, a fee not to exceed
27 seventy-five dollars (\$75) per hour for each examiner necessarily
28 engaged in the examination of the trust company, trust business,
29 or trust department. The commissioner shall assess the fee upon
30 completion of the examination of the trust company or trust
31 business and shall mail or otherwise deliver an invoice for the fee
32 to the institution. The institution shall pay the fee within 30 days
33 after the invoice is mailed or otherwise delivered to it.

34 409. If any bank or trust company fails to make timely payment
35 of any assessment made pursuant to Section 405, 406, or 408, the
36 commissioner may, in the commissioner's sole discretion, (a)
37 cancel the certificate of authority of the bank or trust company to
38 conduct a banking or trust business or (b) levy a civil penalty
39 pursuant to Section 329.

40 410. As of the operative date of this section:

1 (a) *The State Banking Fund is converted into a separate account*
2 *in the Financial Institutions Fund and designated as the State*
3 *Banking Account.*

4 (b) *All moneys and other assets and all liabilities of the State*
5 *Banking Fund shall be transferred to the State Banking Account.*

6 411. *Except as otherwise provided in Section 413 or 414, all*
7 *salaries and other expenses of the department, other than those*
8 *incurred in administering laws relating to savings associations or*
9 *the savings association business, credit unions or the credit union*
10 *business, industrial banks, the industrial banking business,*
11 *insurance premium finance agencies, the insurance premium*
12 *finance business, or Article 2 (commencing with Section 53630)*
13 *of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government*
14 *Code, shall be paid out of the State Banking Account in the*
15 *Financial Institutions Fund. Salaries and other expenses incurred*
16 *in the liquidation or conservation of any bank (other than an*
17 *industrial bank) or of any person licensed under Division 1.2*
18 *(commencing with Section 2000) or Division 15 (commencing with*
19 *Section 31000), including the compensation of employees of the*
20 *department to the extent that they are engaged in that liquidation*
21 *or conservation, if possible, and if advanced from the State Banking*
22 *Account in the Financial Institutions Fund, shall constitute a first*
23 *charge against the assets of the bank or licensee, as the case may*
24 *be. Salaries and other expenses incurred in the liquidation or*
25 *conservation of any industrial bank, including the compensation*
26 *of employees of the department to the extent that they are engaged*
27 *in that liquidation or conservation, if possible, and if advanced*
28 *from the Industrial Bank Account in the Financial Institutions*
29 *Fund, shall constitute a first charge against the assets of the*
30 *industrial bank.*

31 412. *The commissioner shall deliver all moneys received or*
32 *collected by the commissioner under Section 405, 406, or 408 or*
33 *otherwise, other than moneys received or collected by the*
34 *commissioner under laws relating to savings associations, the*
35 *savings association business, credit unions, the credit union*
36 *business, industrial banks, the industrial banking business,*
37 *insurance premium finance agencies, the insurance premium*
38 *finance business, or Article 2 (commencing with Section 53630)*
39 *of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government*

1 Code, to the Treasurer, who shall deposit the moneys to the credit
2 of the State Banking Account of the Financial Institutions Fund.
3 413. (a) In this section, “assessment statute” means any statute
4 that authorizes the commissioner to make or collect an assessment
5 (other than a fine) on financial institutions, including the following:
6 (1) Sections 405 to 407, inclusive.
7 (2) Section 2042.
8 (3) Section 33302.
9 (4) Article 2 (commencing with Section 8030) of Chapter 7 of
10 Division 2.
11 (5) Article 4 (commencing with Section 14350) of Chapter 3 of
12 Division 5.
13 (6) Section 1532.
14 (b) The commissioner may charge to and collect from the
15 Financial Institutions Fund, the Credit Union Fund, each of the
16 accounts included in the Financial Institutions Fund, and each of
17 the programs included in the State Banking Account an amount
18 equal to the fund’s, account’s, or program’s pro rata share of
19 those expenses of the department which, in the opinion of the
20 commissioner, it is not feasible to attribute to any single one of
21 the funds, accounts, or programs. The fund’s, account’s, or
22 program’s pro rata share shall be determined and paid in the
23 manner and at the time ordered by the commissioner.
24 (c) The provisions of any assessment statute that authorize the
25 commissioner to make or collect an assessment for the purposes
26 specified in the assessment statute include authority for the
27 commissioner to make and collect an assessment for the additional
28 purpose of providing money in an amount that will, in the
29 commissioner’s judgment, be sufficient to make payments that may
30 be required under subdivision (b).
31 414. Notwithstanding any other provision of this code or of
32 Section 53667 of the Government Code, the commissioner may,
33 at any time during a fiscal year, pay any expense of the department
34 from any of the following accounts and funds: the State Banking
35 Account, the Savings and Loan Account, the Industrial Bank
36 Account, the Financial Institutions Fund, the Credit Union Fund,
37 and the Local Agency Deposit Security Fund. However, if the
38 commissioner pays an expense of the department from an account
39 or fund from which the expense is not, except for this section,
40 permitted to be paid, the commissioner shall, as of a date within

1 *that fiscal year, reimburse the account or fund from which the*
2 *expense was paid by making a transfer from the account or fund*
3 *from which the expense would have been permitted to be paid.*

4
5 *CHAPTER 4. OPERATIONS*
6

7 *450. (a) In this section, “governmental agency” includes,*
8 *without limitation, any agency of this state, of any other state of*
9 *the United States, of the United States, or of any foreign nation.*

10 *(b) The commissioner may furnish information to a*
11 *governmental agency that regulates financial institutions.*

12 *(c) The commissioner may furnish to a governmental agency*
13 *that administers a loan guarantee or similar program, information*
14 *relating to a person who participates in the program.*

15 *(d) The commissioner may furnish to a governmental agency*
16 *that regulates business activities, other than the type described in*
17 *subdivision (b), information relating to any of the following:*

18 *(1) A suspected violation of a law administered by the agency.*

19 *(2) A person involved in an application to the agency for a*
20 *license, approval, or other authorization.*

21 *(e) The commissioner may furnish to a governmental agency*
22 *that is a law enforcement agency information relating to a*
23 *suspected crime.*

24 *(f) The commissioner may furnish information to any person*
25 *who provides share insurance or guaranty of the shares of a credit*
26 *union in accordance with Section 14858, 16004, or 16503.*

27 *(g) The commissioner may furnish confidential information*
28 *regarding a licensee to the directors, officers, employees, attorneys,*
29 *accountants, and consultants of that licensee in accordance with*
30 *Section 452.*

31 *(h) This section does not prescribe the only circumstances under*
32 *which the commissioner may furnish information.*

33 *451. With the prior approval of the commissioner, a foreign*
34 *(other state) or foreign (other nation) financial institutions*
35 *regulatory agency may examine a licensee and any of its offices,*
36 *provided that the agency has a regulatory interest in the licensee.*
37 *Any regulatory agency approved by the commissioner under this*
38 *section shall be considered a supervisory agency under subdivision*
39 *(f) of Section 7480 of the Government Code.*

1 452. (a) *Directors, officers, employees, attorneys, accountants,*
2 *or consultants of a licensee may not disclose in any manner to any*
3 *person confidential information regarding the licensee received*
4 *from the commissioner. The prohibition in this section shall not*
5 *apply to disclosures of confidential information by directors,*
6 *officers, employees, attorneys, accountants, or consultants of the*
7 *licensee:*

8 (1) *Made pursuant to a subpoena or other discovery proceeding.*

9 (2) *Made to any state or federal prosecuting or investigatory*
10 *agency or authority.*

11 (3) *Made to any state, federal, or foreign (other nation) financial*
12 *institutions regulatory agency that has a direct regulatory interest*
13 *in the licensee.*

14 (4) *Made to any state or federal taxing agency.*

15 (5) *Made as otherwise required by law.*

16 (6) *Made as otherwise authorized by the commissioner in*
17 *writing.*

18 (b) *Any director, officer, employee, attorney, accountant, or*
19 *consultant that discloses confidential information in a manner*
20 *other than allowed by this section shall be liable for a civil penalty*
21 *not to exceed fifty thousand dollars (\$50,000). The commissioner*
22 *may impose a penalty under this section in accordance with the*
23 *procedures set forth in Section 329.*

24 (c) *The prohibition set forth in subdivision (a) shall not apply*
25 *to any discussion, analysis, or other use of confidential information*
26 *provided by the commissioner that occurs between directors,*
27 *officers, employees, attorneys, accountants, or consultants of the*
28 *licensee.*

29 453. *Every licensee shall make and file with the commissioner*
30 *whenever required by him or her a report in any form as the*
31 *commissioner may prescribe and verified in any manner the*
32 *commissioner prescribes, showing its financial condition and any*
33 *other information as the commissioner may require at the close*
34 *of business on any day designated by him or her. Any verification*
35 *shall state that each of the officers making the verification has a*
36 *personal knowledge of the matters in the report and that each of*
37 *them believes that each statement in the report is true.*

38 454. *The commissioner shall call for the report specified in*
39 *Section 453 from all licensees at least four times each year upon*
40 *dates selected by the commissioner.*

1 455. *The commissioner may at any time require any licensee*
2 *to make and file with him or her a special report furnishing any*
3 *information as the commissioner may specify when necessary to*
4 *inform him or her fully of the actual financial condition and all*
5 *other affairs of the licensee. The reports shall be in the form and*
6 *filed on a date prescribed by the commissioner and shall, if*
7 *required by the commissioner, be verified in any manner that he*
8 *or she prescribes.*

9 456. *Every licensee shall keep its corporate records, financial*
10 *records, and books of account in words and figures of the English*
11 *language and in form satisfactory to the commissioner.*

12 457. *Every licensee shall notify the commissioner of any change*
13 *in the following officers of the licensee, to the extent that those*
14 *officers exist within the licensee: chairperson, chief executive*
15 *officer, president, general manager, managing officer, chief*
16 *financial officer, or chief credit officer.*

17 458. (a) *Each report required under this article, or under any*
18 *other provision of law administered by the commissioner, shall be*
19 *filed with the commissioner at the time that the commissioner may*
20 *require. If any licensee fails to make any required report at the*
21 *time specified by the commissioner or fails to include therein any*
22 *matter required by this article, any provision of law administered*
23 *by the commissioner, or by the commissioner, it shall be liable to*
24 *the people of this state in the sum of not more than one hundred*
25 *dollars (\$100) for each day that the report is delayed or withheld*
26 *by the failure or neglect of the licensee.*

27 (b) *The provisions of Section 329 shall not apply to this section.*

28 459. (a) *Every licensee shall file with the commissioner one*
29 *copy of all material filed by the licensee with any applicable federal*
30 *financial institutions regulatory agency, law enforcement agency,*
31 *or other federal agency that is required to be filed by law or order*
32 *of the agency.*

33 (b) *Each copy required to be filed pursuant to subdivision (a)*
34 *shall be filed with the commissioner on or before the date upon*
35 *which the original is filed with the federal regulatory agency and*
36 *shall be available for inspection by the public except to the extent*
37 *the information contained therein is accorded confidential*
38 *treatment under federal law or regulations. That material shall*
39 *be open for inspection by the Attorney General.*

1 460. Any person intentionally making a false statement in any
2 report required to be rendered under this article or other provision
3 of law administered by the commissioner is guilty of perjury.

4 461. Any debt due a licensee on which interest is past due and
5 unpaid for the period of one year shall be charged off, unless the
6 debt is well secured or is in process of collection.

7 462. Any person that provides services to any licensee, at the
8 request of the commissioner, shall submit to an examination by
9 the commissioner. Should the commissioner deem it necessary or
10 desirable that an examination be made of a person, the examination
11 shall be made at the expense of the person examined. If the person
12 refuses to permit an examination to be made, the commissioner
13 may order every licensee receiving services from that person to
14 discontinue receiving those services or otherwise conducting
15 business with that person, and the licensees shall comply with that
16 order.

17 463. (a) All references in this code and the Corporations Code
18 to financial statements, balance sheets, income statements, and
19 statements of changes in financial position of a licensee, and all
20 references to assets, liabilities, earnings, retained earnings,
21 shareholders' equity, net worth, and similar accounting items of
22 a licensee, mean those financial statements or those items prepared
23 or determined in conformity with generally accepted accounting
24 principles then applicable in the United States, fairly presenting
25 in conformity with generally accepted accounting principles
26 accepted in the United States the matters which they purport to
27 present, subject to any specific accounting treatment required by
28 any applicable provision of the Corporations Code, this code, or
29 any regulation, order issued by the commissioner, or agreement
30 entered into by the commissioner and a licensee.

31 (b) The commissioner may, by regulation or order, require that
32 any financial statement or accounting item of a licensee be
33 prepared or determined in a manner other than in conformity with
34 generally accepted accounting principles accepted in the United
35 States if the commissioner finds that such other manner is
36 necessary or appropriate to carry out the purposes or provisions
37 of this code.

38 464. (a) An officer of a financial institution, within the meaning
39 of Section 1101(1) of the federal Right to Financial Privacy Act
40 of 1978 (12 U.S.C. Sec. 3401(1)), shall furnish the State

1 Department of Health Care Services or its designee with
2 information in the possession of the bank or company regarding
3 the assets of any person who is applying for, or is receiving
4 assistance or benefits from, the State Department of Health Care
5 Services and has provided authorization pursuant to Section
6 14013.5 of the Welfare and Institutions Code.

7 (b) The obtaining of financial records by the State Department
8 of Health Care Services, or its designee, pursuant to this section
9 shall be subject to the cost reimbursement requirements of Section
10 1115(a) of the federal Right to Financial Privacy Act of 1978 (12
11 U.S.C. Sec. 3415(a)) and shall be at no cost to the applicant,
12 recipient, or any other person, as defined in paragraph (3) of
13 subdivision (c) of Section 14013.5 of the Welfare and Institutions
14 Code.

15 (c) An authorization obtained by the State Department of Health
16 Care Services, or its designee, under Section 14013.5 of the
17 Welfare and Institutions Code shall be considered as meeting the
18 requirements of Section 1103(a) of the federal Right to Financial
19 Privacy Act of 1978 (12 U.S.C. Sec. 3403(a)) and, notwithstanding
20 Section 1104(a) of the federal Right to Financial Privacy Act of
21 1978 (12 U.S.C. Sec. 3404(a)), need not be furnished to the
22 financial institution.

23 (d) The certification requirements of Section 1103(b) of the
24 federal Right to Financial Privacy Act of 1978 (12 U.S.C. Sec.
25 3403(b)) shall not apply to requests by the State Department of
26 Health Care Services, or its designee, pursuant to an authorization
27 provided under Section 14013.5 of the Welfare and Institutions
28 Code.

29 (e) A request by the State Department of Health Care Services,
30 or its designee, pursuant to an authorization provided under
31 Section 14013.5 of the Welfare and Institutions Code shall be
32 deemed to meet the requirements of Section 1104(a)(3) of the
33 federal Right to Financial Privacy Act of 1978 (12 U.S.C. Sec.
34 3404(a)(3)) and of Section 1102 of the act (12 U.S.C. Sec. 3402),
35 relating to a reasonable description of financial records.

1 CHAPTER 5. EXAMINATIONS AND REPORTS-BANKING

2
3 Article 1. Examination

4
5 500. (a) (1) For purposes of this section, “foreign bank”
6 means the business in this state of every foreign (other nation)
7 bank licensed under Article 3 (commencing with Section 1800) of
8 Chapter 20 of Division 1.1

9 (2) For purposes of this subdivision, an examination made by
10 the commissioner in conjunction with or with assistance from a
11 bank regulatory agency of the United States, of a state of the United
12 States, or of a foreign nation is deemed to be an examination
13 caused by the commissioner.

14 (3) No provision of this subdivision shall be deemed to require
15 that the commissioner cause an examination to be made onsite at
16 the offices of a bank.

17 (4) The commissioner shall cause every California state bank
18 and every foreign bank to be examined to the extent and whenever
19 and as often as the commissioner shall deem it advisable, but in
20 no case less frequently than once every 12 months, except that the
21 following banks shall be examined pursuant to federal law no less
22 frequently than state banks and foreign banks that meet the
23 respective federal criteria:

24 (A) California state banks that meet the criteria set forth in
25 Section 1820(d)(4) of Title 12 of the United States Code.

26 (B) Foreign banks that meet the criteria set forth in Section
27 211.26(c)(2) of Title 12 of the Code of Federal Regulations.

28 (5) The examinations required by paragraph (4) may be
29 conducted in alternate examination periods, as appropriate, if the
30 commissioner determines that an examination of the state bank by
31 the appropriate federal regulator, insuring or guaranteeing
32 corporation during the intervening examination period carries out
33 the purpose of this section. The commissioner may not accept two
34 consecutive examinations, or two consecutive examination reports,
35 made by federal regulators, insuring or guaranteeing corporations,
36 or agencies with respect to the condition of the state bank.

37 (6) The commissioner shall cause every California state trust
38 company to be examined to the extent and whenever and as often
39 as the commissioner shall deem it advisable, but in no case less
40 frequently than once every 24 months.

1 (7) *The commissioner may examine subsidiaries of every*
2 *California state bank, state trust company, and foreign (other*
3 *nation) bank licensed under Article 3 (commencing with Section*
4 *1800) of Chapter 20 of Division 1.1 to the extent and whenever*
5 *and as often as the commissioner shall deem it advisable.*

6 (b) *The commissioner may at any time examine any of the*
7 *following:*

8 (1) *Any office of a bank organized under the laws of this state.*

9 (2) *Any office of a foreign (other state) bank that maintains an*
10 *office in this state.*

11 (3) *Any office of a foreign (other nation) bank that maintains*
12 *an office in this state.*

13 (c) *The officers and employees of every California state bank,*
14 *California state trust company, and foreign bank being examined*
15 *shall exhibit to the examiners, on request, any or all of its*
16 *securities, books, records, and accounts and shall otherwise*
17 *facilitate the examination so far as it may be in their power.*

18 501. (a) *Whenever, in the judgment of the commissioner, it is*
19 *necessary or advisable to make an extra examination of or to*
20 *devote any extraordinary attention to any bank, any foreign bank,*
21 *or any office of a foreign bank, he or she has the authority to do*
22 *so and to charge and collect from the bank or foreign bank, in the*
23 *case of an extra examination, an amount not exceeding seventy-five*
24 *dollars (\$75) per hour for each examiner engaged in the*
25 *examination and, in the case of extraordinary attention, an amount*
26 *not exceeding the department's expenses in providing the*
27 *extraordinary attention, including, but not limited to, compensation*
28 *of employees.*

29 (b) *Whenever in the judgment of the commissioner it is necessary*
30 *or expedient for any examiner engaged in any examination to*
31 *travel outside this state, the commissioner may charge for the*
32 *travel expenses of the examiner.*

33 502. (a) *The commissioner may by order or regulation grant*
34 *exemptions from this section in cases where the commissioner*
35 *finds that the requirements of this section are not necessary.*

36 (b) *Each California state bank shall, within 90 days after the*
37 *end of each fiscal year, or within such extended time as the*
38 *commissioner may prescribe, file with the commissioner an audit*
39 *report for the fiscal year.*

1 (c) *The audit report called for in subdivision (b) shall comply*
2 *with all of the following provisions:*

3 (1) *The audit report shall contain those audited financial*
4 *statements of the bank for or as of the end of the fiscal year*
5 *prepared in accordance with generally accepted accounting*
6 *principles and any other information that the commissioner may*
7 *require.*

8 (2) *The audit report shall be based upon an audit of the bank*
9 *conducted in accordance with generally accepted auditing*
10 *standards and any other requirements that the commissioner may*
11 *prescribe.*

12 (3) *The audit report shall be prepared by an independent*
13 *certified public accountant or independent public accountant who*
14 *is not unsatisfactory to the commissioner.*

15 (4) *The audit report shall include or be accompanied by a*
16 *certificate or opinion of the independent certified public accountant*
17 *or independent public accountant that is satisfactory in form and*
18 *content to the commissioner. If the certificate or opinion is*
19 *qualified, the commissioner may order the bank to take such action*
20 *as the commissioner may find necessary to enable the independent*
21 *certified public accountant or independent public accountant to*
22 *remove the qualification.*

23 503. *The commissioner, whenever in his or her opinion the*
24 *condition of the bank, trust company, or foreign banking*
25 *corporation is such as to require such audit, may require any bank,*
26 *trust company, or foreign banking corporation to employ a certified*
27 *public accountant to make a special audit of the affairs of such*
28 *bank or trust company at its expense.*

29 504. *The commissioner, for good cause, at any time and from*
30 *time to time may employ appraisers to appraise the value of any*
31 *investment, asset, or property held or upon which a lien is held as*
32 *security for a loan. The bank, trust company, or foreign banking*
33 *corporation shall pay to the commissioner on demand the cost of*
34 *such appraisal.*

35 505. *The commissioner, a deputy commissioner, and every*
36 *examiner assigned to an examination may administer an oath to*
37 *any person whose testimony is required for the purposes of any*
38 *examination authorized by this division and may by issuance of*
39 *subpoena compel the appearance of any person and the production*
40 *of any evidence for the purposes of the examination.*

1 506. *Whenever he or she deems it expedient, the commissioner*
2 *may call a meeting of the stockholders of any bank or trust*
3 *company. Notice of the time and place of the meeting shall be given*
4 *to each stockholder by a notice mailed to the stockholder by*
5 *registered mail at the stockholder's last known address at least*
6 *15 days before the date of the meeting. Any expenses of such*
7 *meeting shall be borne by the bank or trust company.*

8 507. *During any emergency period declared by the President*
9 *of the United States, each bank shall conform to any order of the*
10 *commissioner directed to it, relating to and conforming with*
11 *regulations, limitations, or restrictions which are applicable*
12 *thereto prescribed by the Secretary of the Treasury, the*
13 *Comptroller of the Currency, or the Board of Governors of the*
14 *Federal Reserve System regulating or governing the operations*
15 *of banks which are members of the Federal Reserve System.*

16 508. *During any emergency period declared by the Governor*
17 *no bank shall transact any banking business except to such extent*
18 *and subject to such regulations, limitations, or restrictions as may*
19 *be prescribed by the commissioner, which, as to member banks,*
20 *shall be as consistent as the exigencies of the situation permit with*
21 *the provisions of the Federal Reserve Act and regulations issued*
22 *thereunder or, as to insured banks, shall be as consistent as the*
23 *exigencies of the situation permit with the rules and regulations*
24 *governing banks whose deposits are insured by the Federal Deposit*
25 *Insurance Corporation.*

26 509. (a) *The commissioner may, in his or her discretion, bring*
27 *an action in the name of the people of this state in a superior court*
28 *to enjoin a violation of, to enforce compliance with, or to collect*
29 *a penalty or other liability imposed under, this division or any*
30 *regulation or order issued under this division. The amount of any*
31 *penalty or liability collected shall be deposited into the State*
32 *Banking Account in the Financial Institutions Fund. Upon a proper*
33 *showing, a permanent or preliminary injunction, restraining order,*
34 *or writ of mandate shall be granted, and a monitor, receiver,*
35 *conservator, or other designated fiduciary or officer of the court*
36 *may be appointed for the defendant or the defendant's assets, or*
37 *other appropriate relief may be granted.*

38 (b) *A receiver, monitor, conservator, or other designated*
39 *fiduciary officer of the court appointed by the superior court*
40 *pursuant to this section may, with the approval of the court,*

1 *exercise all of the powers of the defendant's officers, directors,*
2 *partners, trustees, or of persons who exercise similar powers and*
3 *perform similar duties, including the filing of a petition for*
4 *bankruptcy. No action at law or in equity may be maintained by*
5 *any party against the commissioner, or a receiver, monitor,*
6 *conservator, or any other designated fiduciary officer of the court*
7 *by reason of their exercising these powers or performing these*
8 *duties pursuant to the order of, or with the approval of, the superior*
9 *court.*

10 *(c) If the commissioner determines it is in the public interest,*
11 *the commissioner may include in an action authorized by*
12 *subdivision (a), a claim for ancillary relief, including, but not*
13 *limited to, a claim for restitution, disgorgement, or damages on*
14 *behalf of the person injured by the act or practice that is the subject*
15 *matter of the action. The court has jurisdiction to award additional*
16 *relief.*

17 *(d) The provision of subdivision (a) that authorizes the*
18 *appointment of a monitor, receiver, conservator, or other*
19 *designated fiduciary or officer of the court, and subdivisions (b)*
20 *and (c) do not apply to any of the following:*

21 *(1) A state bank that is authorized by the commissioner to*
22 *transact commercial banking or trust business.*

23 *(2) A national bank.*

24 *(3) A foreign (other state) bank that maintains a branch office*
25 *in this state in accordance with federal law, the law of this state,*
26 *and the law of the bank's domicile.*

27 *(4) A foreign (other nation) bank that is licensed by the*
28 *commissioner to maintain a branch office or agency, as defined*
29 *in Section 1750, in this state.*

30 *(5) A foreign (other nation) bank that maintains a federal branch*
31 *or agency, as defined in Section 1750, in this state.*

32 *(e) The provisions of this section that authorize the*
33 *commissioner to bring actions and seek relief are not intended to,*
34 *and do not, affect any right that any other person may have to*
35 *bring the same or similar actions, or to seek the same or similar*
36 *relief.*

Article 2. Reports

1
2
3 520. (a) A California state bank shall prominently display in
4 the lobby of its main office and each branch office, except an
5 automated teller machine branch office, a notice that any person
6 may obtain a financial report from the bank. The notice shall
7 include the address and telephone number of the person or office
8 to be contacted for a financial report. The bank shall, promptly
9 after receiving a request for a financial report, mail or otherwise
10 furnish the financial report to the requester. The first financial
11 report shall be provided without charge.

12 (b) The financial report called for in this section shall contain
13 either (1) the information that the commissioner may require by
14 regulation or (2) in the absence of a regulation, the last balance
15 sheet and income statement, each without any schedules, that the
16 bank filed with the commissioner pursuant to Section 453.

CHAPTER 6. BANK EXTRAORDINARY SITUATION CLOSING

17
18
19
20 530. This chapter is known and may be cited as the “Bank
21 Extraordinary Situation Closing Act.”

22 531. “Extraordinary Situation” means any condition or
23 occurrence, other than as set forth in Section 3100, that may
24 interfere or is inconsistent with the conduct of normal business
25 operations at one or more offices of a bank or which poses a threat
26 to the safety or security of persons or property, or both.

27 532. Whenever the commissioner determines that an
28 extraordinary situation exists anywhere in this state the
29 commissioner may, by proclamation, authorize banks located in
30 the affected area or areas to close any or all of their offices. The
31 office or offices so closed shall remain closed until the
32 commissioner proclaims that the extraordinary situation has ended
33 or until such earlier time as the officers of the bank determine that
34 one or more closed offices should reopen and in either event for
35 such further time thereafter as may reasonably be required to
36 reopen.

37 533. (a) Whenever the officers of a bank are of the opinion
38 that an extraordinary situation exists which affects or may affect
39 one or more of a bank’s offices, they shall have the authority in
40 the reasonable and proper exercise of their discretion to determine

1 *not to open such offices on any business or banking day, or, if such*
2 *offices have opened to close one or more of them during the*
3 *continuation of such extraordinary situation even if the*
4 *commissioner has not issued and does not issue a proclamation*
5 *of extraordinary situation. The office or offices so closed shall*
6 *remain closed until such time as the officers determine with respect*
7 *to each such office that the extraordinary situation has ended and*
8 *for such further time thereafter as may reasonably be required to*
9 *be reopened; however, in no case shall such office or offices remain*
10 *closed for more than 48 consecutive hours excluding other legal*
11 *holidays without requesting the approval of the commissioner nor,*
12 *in case such request is denied by the commissioner, for more than*
13 *24 consecutive hours excluding other legal holidays after such*
14 *denial.*

15 *(b) The officers of a bank may close one or more of the bank's*
16 *offices on any day or days designated for mourning, rejoicing, or*
17 *other special observance by proclamation of the Governor or the*
18 *President of the United States.*

19 *534. A bank closing an office or offices pursuant to the*
20 *authority granted under subdivision (a) of Section 533 shall give*
21 *prompt notice of its action to the commissioner, by any means*
22 *available.*

23 *535. Any day on which a bank or any one or more of its offices*
24 *is closed pursuant to the authorization granted by this chapter*
25 *shall be, with respect to such bank or any of its offices which are*
26 *closed, a legal holiday for all purposes with respect to any banking*
27 *business of any character. No liability, or loss of rights of any*
28 *kind, on the part of any bank or director, officer, or employee*
29 *thereof, shall accrue or result by virtue of any closing authorized*
30 *by this chapter.*

31 *536. Provisions of this chapter shall be construed and applied*
32 *as being in addition to, and not a substitution for, or limitation of,*
33 *any other law of this state or the United States authorizing the*
34 *closing of a bank or excusing the delay by a bank in the*
35 *performance of its duties and obligations because of extraordinary*
36 *situations or conditions beyond the bank's control or otherwise.*

CHAPTER 7. ENFORCEMENT

Article 1. General Provisions

550. In this article:

(a) "Appropriate licensee business" means the business that a licensee may conduct in accordance with the charter or license that the commissioner has issued to that licensee.

(b) "Customer" means a depositor of a bank, a member of a credit union, or a customer of any other licensee.

(c) "Holding company" shall have the meaning set forth in Section 1280.

(d) "Officer of a subject institution" means any director, officer, official, or employee of the subject institution.

(e) "Person" means a subject institution or a subject person.

(f) "Subject institution" means any of the following:

(1) Licensee.

(2) Subsidiary of a licensee.

(3) Foreign (other state) or foreign (other nation) bank or credit union that maintains an office in this state, with respect to any such office other than a national bank or federal credit union.

(4) Any other person lawfully conducting the business of a bank or credit union in this state other than a national bank or federal credit union.

(g) "Subject person," when used with respect to a subject institution, means any of the following:

(1) Director, officer, employee, or agent of the subject institution.

(2) Member, consultant, joint venture partner, or other person that participates in the affairs of a subject institution.

(3) Independent contractor, including any attorney, appraiser, or accountant, who knowingly or recklessly participates in any of the following acts if the act caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the subject institution:

(A) A violation of any applicable law, regulation, or order.

(B) A breach of fiduciary duty.

(C) An unsafe or unsound act.

(h) "Violation" includes any act performed, alone or with other persons, for or toward causing, bringing about, participating in,

1 *counseling, aiding, or abetting a violation of any applicable statute,*
2 *regulation, provision of a written order issued by the commissioner,*
3 *or provision of a written agreement made between the*
4 *commissioner and a subject institution or subject person.*

5 *551. Any subject person who is entitled to a hearing pursuant*
6 *to this article may waive that right at any time. A waiver under*
7 *this section shall relieve the commissioner from having to issue a*
8 *formal notice of hearing that would otherwise be required by this*
9 *article.*

10 *552. (a) Within 30 days after an order is issued pursuant to*
11 *Section 567, 581, 582, 586, or 591, or subdivision (c) of Section*
12 *587, the person to whom the order is issued may file with the*
13 *commissioner an application for a hearing on the order.*

14 *(b) If the commissioner fails to commence the hearing within*
15 *15 business days after the application is filed with the*
16 *commissioner or within any longer period to which the person*
17 *subject to the order consents, the order shall be deemed rescinded.*

18 *(c) Within 30 days after the hearing, or within any longer period*
19 *to which the person consents, the commissioner shall affirm,*
20 *modify, or rescind the order. If the commissioner fails to affirm,*
21 *modify, or rescind the order within that time limit, the order shall*
22 *be deemed rescinded.*

23 *(d) The right to petition for judicial review of the order shall*
24 *not be affected by the failure of the person subject to the order to*
25 *apply to the commissioner for a hearing on the order pursuant to*
26 *subdivision (a).*

27 *553. In addition to any other action or requirement the*
28 *commissioner deems necessary or advisable, an order issued*
29 *pursuant to Section 580, 581, 582, 585, 586, or 587 may require*
30 *the person subject to the order to do any of the following:*

31 *(a) Make restitution or provide reimbursement, indemnification,*
32 *or guarantee against loss, if the subject institution, subject person,*
33 *or holding company was unjustly enriched by the action or*
34 *violation or if the action or violation involved a reckless disregard*
35 *for any provision of this division, of any regulation or order issued*
36 *under this division, of any other applicable law, or of any*
37 *agreement with the commissioner.*

38 *(b) Restrict the growth of the subject institution.*

39 *(c) Dispose of any loan or other asset.*

40 *(d) Correct violations of law.*

1 (e) *Employ qualified officers or employees, who may be subject*
2 *to approval of the commissioner.*

3 (f) *Limit the activities or functions of the subject institution,*
4 *subject person, or holding company.*

5 554. *If the commissioner takes possession of a subject*
6 *institution without a prior notice or hearing, or takes action against*
7 *a subject person without prior notice or hearing, the commissioner*
8 *shall, upon taking possession or taking that action, concurrently*
9 *provide to the subject institution or subject person a written order.*
10 *The order shall set forth the condition or conditions of the subject*
11 *institution or action or actions of the subject person that constitute*
12 *the basis or bases for the commissioner's action. In any case where*
13 *the commissioner takes possession of a subject institution, the*
14 *commissioner shall establish, by clear evidence, the basis for his*
15 *or her action.*

16

17 *Article 2. Actions Involving the Conduct of Business by*
18 *Unauthorized Persons*

19

20 560. *No person who has not received a certificate from the*
21 *commissioner authorizing it to engage in the banking business*
22 *shall solicit or receive deposits, issue certificates of deposit with*
23 *or without provision for interest, make payments on checks, or*
24 *transact business in the way or manner of a bank or trust company.*

25 561. *No person who has not received a certificate from the*
26 *commissioner authorizing it to engage in the banking business*
27 *shall advertise that it is accepting deposits, and issuing notes or*
28 *certificates therefore, or make use of any office sign, at the place*
29 *where its business is transacted, having thereon any artificial or*
30 *corporate name, or other words indicating that the place or office*
31 *is the place or office of a bank or trust company, that deposits are*
32 *received there or payments made on checks, or any other form of*
33 *banking business is transacted, nor shall any person make use of*
34 *or circulate any letterheads, billheads, blank notes, blank receipts,*
35 *certificates, or circulars, or any written or printed paper, whatever,*
36 *having thereon any artificial or corporate name or other words*
37 *indicating that the business is the business of a bank or trust*
38 *company, or transact business in a way or manner as to lead the*
39 *public to believe that its business is that of a bank or trust company,*
40 *except to the extent expressly authorized by this division.*

1 562. No person who has not received a certificate from the
2 commissioner authorizing it to engage in the banking business
3 shall transact business under any name or title that contains the
4 word “bank” or “banker” or “banking” or “industrial bank” or
5 “industrial loan company” or “investment and loan” or “savings
6 bank” or “thrift and loan” or “trust” or “trustee” or “trust
7 company” or act or advertise in any manner that indicates that
8 the business is the business of a bank or trust company. Any
9 building and loan association or savings association having in its
10 corporate name words not clearly indicating the nature of its
11 business shall state, on all signs, letterheads, and advertising
12 matter, “This is a building and loan association” or “This is a
13 savings association” or words to that effect.

14 563. No provision of Section 560, 561, or 562 prohibits any of
15 the following from transacting any business or performing any
16 activity if it is authorized by applicable law to transact the business
17 or perform the activity and is not prohibited by any applicable
18 law, other than Sections 560, 561, or 562, from transacting the
19 business or performing the activity:

20 (a) Any California state commercial bank, industrial bank, or
21 trust company.

22 (b) Any national bank.

23 (c) Any insured foreign (other state) state bank.

24 (d) Any foreign (other state) state bank that is licensed by the
25 commissioner under Article 4 (commencing with Section 3860) of
26 Chapter 22 to maintain a facility, as defined in Section 3800, in
27 this state.

28 (e) Any foreign (other nation) bank that is licensed by the
29 commissioner under Chapter 20 (commencing with Section 1750)
30 of Division 1.1 to maintain an office in this state.

31 (f) Any foreign (other nation) bank that maintains a federal
32 agency, as defined in subdivision (g) of Section 1750, or federal
33 branch, as defined in subdivision (h) of Section 1750, in this state.

34 (g) Any California state corporation that is incorporated for
35 the purpose of engaging in, and that is authorized by the
36 commissioner to engage in, business under Article 1 (commencing
37 with Section 1850) of Chapter 21 of Division 1.1.

38 (h) Any corporation incorporated under Section 25A of the
39 Federal Reserve Act (12 U.S.C. Sec. 612 et seq.).

1 (i) Any foreign corporation that is licensed by the commissioner
2 under Article 1 (commencing with Section 1850) of Chapter 21 of
3 Division 1.1 to maintain an office in this state and to transact at
4 that office business under Article 1 (commencing with Section
5 1850) of Chapter 21 of Division 1.1.

6 (j) Any industrial bank that is organized under the laws of
7 another state of the United States and is insured by the Federal
8 Deposit Insurance Corporation.

9 564. Any person or any bank violating any provision of the
10 foregoing sections of this article shall be liable to the people of
11 the state in the amount of one hundred dollars (\$100) per day or
12 part thereof during which that violation continues.

13 565. No person shall represent by advertisement, circular, or
14 otherwise, or in any manner mislead anyone to believe, that any
15 securities are legal investments for savings banks in this state or
16 conform to the requirements of law relating to such investments,
17 unless those securities are in fact at that time legal investments
18 for such banks or do in fact so conform. Any person violating the
19 provisions of this section shall be guilty of a misdemeanor and
20 shall be punishable by a fine of not more than one thousand dollars
21 (\$1,000) or by imprisonment in a county jail not exceeding one
22 year, or by both such fine and imprisonment.

23 566. (a) The commissioner may bring an action in the name
24 of the people of this state in superior court to enjoin any violation
25 of, to enforce compliance with, or to collect any penalty or other
26 liability imposed under, any law subject to the jurisdiction of the
27 commissioner. The commissioner may bring an action in the name
28 of the people of this state in superior court to enjoin any violation
29 of, to enforce compliance with, or to collect any penalty or other
30 liability imposed under, any regulation promulgated under the
31 power of the commissioner. The commissioner may bring an action
32 in the name of the people of this state in superior court to enjoin
33 any violation of, to enforce compliance with, or to collect any
34 penalty or other liability imposed under, any (1) agreement entered
35 into with the commissioner or (2) order issued by the
36 commissioner. Upon a proper showing, a permanent or preliminary
37 injunction, restraining order, or writ of mandate shall be granted,
38 and a monitor, receiver, conservator, or other designated fiduciary
39 or officer of the court may be appointed for the defendant or the
40 defendant's assets, or other relief may be granted as appropriate.

1 (b) A receiver, monitor, conservator, or other designated
2 fiduciary officer of the court appointed by the court pursuant to
3 this section may, with the approval of the court, exercise all of the
4 powers of the defendant's officers, directors, partners, trustees,
5 or persons who exercise similar powers and perform similar duties.
6 No action at law or in equity may be maintained by any party
7 against the commissioner or a receiver, monitor, conservator, or
8 other designated fiduciary or officer of the court by reason of his
9 or her exercise of those powers or performing these duties pursuant
10 to the order of, or with the approval of, the court.

11 (c) If the commissioner finds that it is in the public interest, the
12 commissioner may include in any action authorized by subdivision
13 (a) a claim for ancillary relief, including a claim for restitution,
14 disgorgement, or damages on behalf of the person injured by the
15 act or practice constituting the subject matter of the action, and
16 the court shall have jurisdiction to award ancillary relief.

17 (d) Neither the provision of subdivision (a) that authorizes the
18 appointment of a monitor, receiver, conservator, or other
19 designated fiduciary or officer of the court nor any provision of
20 subdivision (b) or (c) applies to any of the following:

21 (1) A licensee that is authorized by the commissioner to transact
22 appropriate licensee business.

23 (2) A foreign (other state) or foreign (other nation) bank or
24 credit union that maintains an office in this state in accordance
25 with federal law, the law of this state, and the law of the bank or
26 credit union's domicile.

27 (e) The provisions of this section that authorize the
28 commissioner to bring actions and seek relief are not intended to,
29 and do not, affect any right that any other person may have to
30 bring the same or similar actions or to seek the same or similar
31 relief.

32 567. If the commissioner finds that a person has conducted,
33 or that there is reasonable cause to believe that a person is about
34 to conduct, business that requires a license issued by the
35 commissioner and that person has not been issued the required
36 license, the commissioner may, without any prior notice or hearing,
37 order the person to cease and desist from conducting any
38 unauthorized business unless and until the person is issued a
39 license to engage in appropriate licensee business.

1 Article 3. *Orders Against Licensees and Subject Persons*

2
3 580. *If, after notice and an opportunity to be heard, the*
4 *commissioner finds any of the factors set forth in subdivision (a)*
5 *or (b) with respect to any subject institution, subject person, or*
6 *any holding company, the commissioner may order the subject*
7 *institution, subject person, or holding company to cease and desist*
8 *from the act or violation:*

9 (a) *That the subject institution, subject person, or holding*
10 *company has engaged or participated, is engaging or participating,*
11 *or that there is reasonable cause to believe that the subject*
12 *institution, subject person, or holding company is about to engage*
13 *or participate, in any unsafe or unsound act with respect to the*
14 *business of the subject institution.*

15 (b) *That the subject institution, subject person, or holding*
16 *company has violated, is violating, or that there is reasonable*
17 *cause to believe that the subject institution, subject person, or*
18 *holding company is about to violate any:*

19 (1) *Provision of any division subject to the jurisdiction of the*
20 *commissioner.*

21 (2) *Provision of any regulation promulgated by, or subject to*
22 *the jurisdiction of, the commissioner.*

23 (3) *Provision of any other applicable law.*

24 (4) *Provision of any written agreement between the subject*
25 *institution, subject person, or holding company, and the*
26 *commissioner.*

27 581. *If the commissioner finds that any of the factors set forth*
28 *in Section 580 is true with respect to any subject institution, subject*
29 *person, or holding company, and that the action, omission, or*
30 *violation is likely to have any of the consequences set forth in*
31 *subdivisions (a) to (d), inclusive, the commissioner may, without*
32 *any prior notice or opportunity to be heard, order the subject*
33 *institution or subject person to cease and desist from the following:*

34 (a) *Any act, omission, or violation that may cause the insolvency*
35 *of the subject institution.*

36 (b) *Any act, omission, or violation that may cause significant*
37 *dissipation of the assets or earnings of the subject institution.*

38 (c) *Any act, omission, or violation that may weaken the condition*
39 *of the subject institution.*

1 (d) Any act, omission, or violation that may otherwise prejudice
2 the interests of the customers of the subject institution.

3 582. If the commissioner finds that a subject institution's books
4 or records are so incomplete or inaccurate that the commissioner
5 is unable through the normal supervisory process to determine
6 the financial condition of the subject institution or the details or
7 purpose of any transaction or transactions that may materially
8 affect the financial condition of the subject institution, the
9 commissioner may, without any prior notice or hearing, order the
10 subject institution to do either of the following:

11 (a) Cease any activity or practice that gave rise, in whole or in
12 part, to the incomplete or inaccurate state of the books or records.

13 (b) Take affirmative action to restore the books or records to a
14 complete and accurate state.

15
16 Article 4. Suspension or Removal of Subject Persons

17
18 585. If, after notice and an opportunity to be heard, the
19 commissioner finds that any of the factors set forth in subdivision
20 (a), any of the factors set forth in subdivision (b), and any of the
21 factors set forth in subdivision (c) are true with respect to a subject
22 person of a subject institution or holding company, the
23 commissioner may issue an order suspending or removing the
24 subject person from the subject person's office, if any, with the
25 subject institution or holding company, and prohibiting the subject
26 person from participating in any manner in the conduct of the
27 affairs of the subject institution or holding company without the
28 approval of the commissioner:

29 (a) (1) That the subject person has, directly or indirectly,
30 violated, or has caused a subject institution to violate, any
31 provision of any:

32 (A) Division subject to the jurisdiction of the commissioner.

33 (B) Regulation promulgated by, or subject to the jurisdiction
34 of, the commissioner.

35 (C) Other applicable law.

36 (D) Order issued by the commissioner or under the
37 commissioner's authority.

38 (E) Written agreement between the subject institution, subject
39 person, or holding company and the commissioner.

1 (2) That the subject person has, directly or indirectly, engaged
2 or participated in any unsafe or unsound act in connection with
3 the business of the subject institution, holding company, or any
4 other business institution.

5 (3) That the subject person has, directly or indirectly, engaged
6 or participated in any act that constitutes a breach of the subject
7 person's fiduciary duty.

8 (b) That, by reason of the act, violation, or breach of fiduciary
9 duty described in subdivision (a):

10 (1) The subject institution, holding company, or business
11 institution has suffered or will probably suffer financial loss or
12 other harm.

13 (2) The rights or interests of the customers or members of the
14 subject institution have been or could be prejudiced.

15 (3) The subject person has received financial gain or other
16 benefit.

17 (c) That the act, violation, or breach of fiduciary duty described
18 in subdivision (a) either involves dishonesty on the part of the
19 subject person or demonstrates the subject person's willful or
20 continuing disregard for the safety or soundness of the subject
21 institution, holding company, or business institution.

22 586. If the commissioner finds that any of the factors set forth
23 in subdivision (a) of Section 585, any of the factors set forth in
24 subdivision (b) of Section 585, and any of the factors set forth in
25 subdivision (c) of Section 585 are true with respect to a subject
26 person of a subject institution, and that it is necessary or advisable
27 for the protection of the subject institution or holding company,
28 or the rights or interests of the customers or members of the subject
29 institution, the commissioner may, without any prior notice or
30 opportunity to be heard, issue an order suspending the subject
31 person from the subject person's office, if any, with the subject
32 institution or holding company, and prohibiting the subject person
33 from participating in any manner in the conduct of the affairs of
34 the subject institution or holding company without the prior
35 approval of the commissioner.

36 587. (a) If the commissioner finds that any of the factors set
37 forth in paragraph (1) and the factor set forth in paragraph (2)
38 are true with respect to a subject person or former subject person
39 of a subject institution or holding company, the commissioner may,
40 without any prior notice or opportunity to be heard, issue an order

1 *suspending the subject person or former subject person from his*
2 *or her office, if any, with the subject institution or holding company*
3 *and prohibiting him or her from further participating in any*
4 *manner in the conduct of the affairs of the subject institution or*
5 *holding company without the approval of the commissioner:*

6 *(1) That the subject person or former subject person has been*
7 *charged in an indictment issued by a grand jury or in an*
8 *information, complaint, or similar pleading issued by a United*
9 *States attorney, district attorney, or other governmental official*
10 *or agency authorized to prosecute crimes, with commission of or*
11 *participation in any of the following:*

12 *(A) A crime that involves dishonesty or breach of trust and that*
13 *is punishable by imprisonment for a term exceeding one year.*

14 *(B) A criminal violation of any provision of this division.*

15 *(C) A criminal violation of Section 1956, 1957, or 1960 of Title*
16 *18 of, or Section 5322 or 5324 of Title 31 of, the United States*
17 *Code.*

18 *(D) A criminal violation of a law of any jurisdiction other than*
19 *the United States that is substantially similar to any of the statutes*
20 *specified in subparagraph (C).*

21 *(2) That continued or resumed service or participation by the*
22 *subject person or former subject person may pose a threat to the*
23 *rights or interests of the customers or members of the subject*
24 *institution or may threaten to impair public confidence in the*
25 *subject institution.*

26 *(b) An order issued pursuant to subdivision (a) shall remain in*
27 *effect until the indictment or the information, complaint, or similar*
28 *pleading is finally disposed of or, if the order is earlier terminated*
29 *by the commissioner, until the order is so terminated.*

30 *(c) If the commissioner finds that the factors set forth in*
31 *paragraphs (1) and (2) are true with respect to a subject person*
32 *or former subject person of a subject institution or holding*
33 *company, the commissioner may, without any prior notice or*
34 *opportunity to be heard, issue an order suspending or removing*
35 *the subject person or former subject person from his or her office,*
36 *if any, with the subject institution or holding company and*
37 *prohibiting him or her from further participating in any manner*
38 *in the affairs of the subject institution or holding company without*
39 *the approval of the commissioner:*

1 (1) That the subject person or former subject person has been
2 finally convicted of any crime of the type described in paragraph
3 (1) of subdivision (a). For purposes of this paragraph, an
4 agreement to enter a pretrial diversion or similar program is
5 deemed to be a conviction.

6 (2) That continued or resumed service or participation by the
7 subject person or former subject person may pose a threat to the
8 interests of the customers of the subject institution or may threaten
9 to impair public confidence in the subject institution.

10 (d) The fact that any subject person of a subject institution
11 charged with a crime of the type described in paragraph (1) of
12 subdivision (a) is not finally convicted of the crime does not
13 preclude the commissioner from issuing an order regarding the
14 subject person pursuant to any other provision of this article.

15 588. (a) Any subject institution, subject person of a subject
16 institution, or former subject person of a subject institution to
17 whom an order is issued under Sections 585 to 587, inclusive, may
18 apply to the commissioner to modify or rescind the order. In
19 deciding whether to grant or deny the application, the
20 commissioner shall consider whether it is in the public interest to
21 modify or rescind the order and whether it is reasonable to believe
22 that the subject person or former subject person will, if and when
23 he or she becomes a subject person of a subject institution or
24 holding company, comply with all applicable provisions of law,
25 or any regulation or order issued by the commissioner.

26 (b) The right of any subject person or former subject person of
27 a subject institution or holding company to whom an order is
28 issued under Sections 585 to 587, inclusive, to petition for judicial
29 review of the order shall not be affected by the failure of the subject
30 institution or holding company to apply to the commissioner
31 pursuant to subdivision (a) to modify or rescind the order.

32 589. (a) In this section, “subject depository institution” means
33 any:

34 (1) Licensee or any bank or credit union that maintains an office
35 in this state.

36 (2) Affiliate of any of the institutions specified in paragraph (1).

37 (3) Subsidiary of any of the institutions specified in paragraph
38 (1).

39 (4) Holding company of any of the institutions specified in
40 paragraph (1).

1 ***(b) It is unlawful for any subject person or former subject person***
2 ***of a subject institution to whom an order is issued under Sections***
3 ***585 to 587, inclusive, willfully to do, directly or indirectly, any of***
4 ***the following without the approval of the commissioner, so long***
5 ***as the order is in effect:***

6 ***(1) Act as a subject person of any subject depository institution.***

7 ***(2) Vote any shares or other securities having voting rights for***
8 ***the election of any person as a director of a subject depository***
9 ***institution.***

10 ***(3) Solicit, procure, transfer or attempt to transfer, or vote any***
11 ***proxy, consent, or authorization with respect to any shares or other***
12 ***securities of a subject depository institution having voting rights.***

13 ***(4) Otherwise to participate in any manner in the affairs of any***
14 ***subject depository institution.***

15

16 ***Article 5. Suspension or Possession of a License***

17

18 ***590. The commissioner may revoke or suspend any license***
19 ***issued by, or under the authority of, the commissioner, if, after***
20 ***notice and opportunity to be heard, the commissioner finds any of***
21 ***the following:***

22 ***(a) The licensee has violated, is violating, or that there is***
23 ***reasonable cause to believe that the licensee is about to violate,***
24 ***any provision of any of the following:***

25 ***(1) Any division subject to the jurisdiction of the commissioner.***

26 ***(2) Any regulation promulgated by, or subject to the jurisdiction***
27 ***of, the commissioner.***

28 ***(3) A provision of any other applicable law.***

29 ***(4) A provision of any order issued by the commissioner.***

30 ***(5) A provision of any written agreement between the licensee***
31 ***and the commissioner.***

32 ***(6) A condition imposed on any written approval granted by***
33 ***the commissioner.***

34 ***(b) Any fact or condition exists which, if it had existed at the***
35 ***time of the original application for the license, would be grounds***
36 ***for denying the application for the license.***

37 ***(c) The licensee is conducting its business in an unsafe manner.***

38 ***(d) The licensee is in such condition that it is unsafe or unsound***
39 ***for the licensee to transact appropriate licensee business.***

1 (e) The licensee has inadequate capital or net worth or is
2 insolvent.

3 (f) The licensee failed to pay any of its obligations as they came
4 due or is reasonably expected to be unable to pay its obligations
5 as they come due.

6 (g) The licensee is the subject of an order for relief in
7 bankruptcy, or has sought other relief under any bankruptcy,
8 reorganization, insolvency, or moratorium law, or any person has
9 applied for any such relief under any such law against the licensee
10 and the licensee has by any affirmative act approved of, or
11 consented to, the action or the relief has been granted.

12 (h) The licensee has ceased to transact appropriate licensee
13 business.

14 (i) The licensee refuses to submit its books, papers, and affairs
15 to the inspection of any examiner.

16 (j) Any officer of the licensee refuses to be examined upon oath
17 touching the concerns of the licensee.

18 (k) The licensee has, with the approval of its board, requested
19 the commissioner to take possession of its property and business.

20 591. If the commissioner finds that any of the factors set forth
21 in Section 590 is true with respect to any licensee and that it is
22 necessary for the protection of the public interest, the commissioner
23 may issue an order immediately suspending or revoking the
24 licensee's license.

25 592. If the commissioner finds that any of the factors set forth
26 in subdivisions (a) to (k), inclusive, is true with respect to a
27 licensee, the commissioner may by order, without any prior notice
28 or opportunity to be heard, take possession of the property and
29 business of the licensee:

30 (a) The licensee has violated any provision of (1) any division
31 subject to the jurisdiction of the commissioner, (2) any regulation
32 promulgated by, or subject to the jurisdiction of, the commissioner,
33 (3) any provision of any other applicable law, (4) any provision
34 of any order issued by the commissioner, (5) any provision of any
35 written agreement made between the commissioner and the
36 licensee, or (6) a condition imposed on any written approval
37 granted by the commissioner.

38 (b) The licensee is conducting its business in an unsafe or
39 unsound manner.

1 (c) *The licensee is in such condition that it is unsafe or unsound*
2 *for the licensee to transact appropriate licensee business.*

3 (d) *The licensee has inadequate capital or net worth or is*
4 *insolvent.*

5 (e) *If the licensee is a bank, the tangible shareholders' equity*
6 *of the bank is less than the following:*

7 (1) *If the bank is a commercial bank or industrial bank, the*
8 *greater of three percent of the bank's total assets or one million*
9 *dollars (\$1,000,000).*

10 (2) *If the bank is a trust company other than a commercial bank*
11 *authorized to engage in trust business, one million dollars*
12 *(\$1,000,000).*

13 (f) *The licensee failed to pay any of its obligations as they came*
14 *due or is reasonably expected to be unable to pay its obligations*
15 *as they come due.*

16 (g) *The licensee has applied for an adjudication of bankruptcy,*
17 *reorganization, arrangement, or other relief under any bankruptcy,*
18 *reorganization, insolvency, or moratorium law, or that any person*
19 *has applied for any such relief under any such law against the*
20 *licensee and the licensee has by any affirmative act approved of*
21 *or consented to the action or the relief has been granted.*

22 (h) *The licensee has ceased to transact the business the licensee*
23 *is authorized to conduct pursuant to its license.*

24 (i) *The licensee refuses to submit its books, papers, and affairs*
25 *to the inspection of any examiner.*

26 (j) *Any officer of the licensee refuses to be examined upon oath*
27 *touching the concerns of the licensee.*

28 (k) *The licensee has, with the approval of its board, requested*
29 *the commissioner to take possession of its property and business.*

30 593. (a) *If the commissioner takes possession of the property*
31 *and business of a licensee pursuant to Section 592, the licensee*
32 *may, within 10 days, apply to the superior court in the county*
33 *where its head office is located to enjoin further proceedings. The*
34 *court may, after citing the commissioner to show cause why further*
35 *proceedings should not be enjoined and after a hearing, dismiss*
36 *the application or enjoin the commissioner from further*
37 *proceedings and order the commissioner to surrender the property*
38 *and business of the licensee to the licensee or make any further*
39 *order as may be just. The judgment of the court may be appealed*
40 *by the commissioner or by the licensee as allowed by law.*

1 (b) At any time after the commissioner takes possession of the
 2 property and business of a licensee pursuant to Section 592, the
 3 licensee may, with the approval of the commissioner, resume
 4 business upon conditions as the commissioner may prescribe.

5 594. (a) Upon taking possession of the property and business
 6 of any licensee, the commissioner shall give notice of that fact to
 7 all persons holding or having in their possession any assets of the
 8 licensee. No person knowing of the taking, or who has been notified
 9 thereof, shall have a lien or charge upon any assets of the licensee
 10 for any payment, advance, or clearance thereafter made or for
 11 any liability thereafter incurred.

12 (b) The giving of notice in accordance with this section shall
 13 not be deemed to be a prerequisite to the taking of possession of
 14 the property and business of the licensee.

15 595. The commissioner is deemed to take possession of the
 16 entire property and business of a licensee when the commissioner
 17 takes possession of the business and property of the head office of
 18 the licensee.

19

20 *CHAPTER 8. LIQUIDATION AND CONSERVATION*

21

22 *Article 1. General Provisions*

23

24 600. In this article, “Federal Insurance Agency” means the
 25 Federal Deposit Insurance Corporation or the National Credit
 26 Union Administration, as appropriate, or their respective
 27 successors-in-interest.

28 601. Upon taking possession of the property and business of
 29 any licensee, the commissioner has authority, and it is his or her
 30 duty, to collect all moneys due to the licensee and to do other acts
 31 as are necessary or expedient to collect, conserve, or protect the
 32 licensee’s assets, property, and business, and he or she shall
 33 proceed to conserve or liquidate the affairs of the licensee as
 34 provided in this article.

35 602. No attachment shall be issued against the property of any
 36 licensee subject to conservation or liquidation pursuant to this
 37 article.

38 603. Upon taking possession of the property and business of
 39 any licensee pursuant to Section 592, the commissioner may

1 *proceed to liquidate or conserve the licensee in the manner*
2 *provided by this article.*

3 604. *Upon taking possession of the property and business of*
4 *a licensee pursuant to Section 592, the commissioner may tender*
5 *to any person or persons an appointment as conservator,*
6 *liquidator, receiver, or liquidating committee of the licensee.*

7 605. *The commissioner shall supervise the acts of the*
8 *conservator, liquidator, receiver, or liquidating committee*
9 *appointed under this article and may remove the conservator,*
10 *liquidator, receiver, or any or all members of the liquidating*
11 *committee in his or her discretion.*

12 606. *If required by the commissioner, the conservator,*
13 *liquidator, receiver, or members of the liquidating committee*
14 *appointed under this article shall provide proof of bond coverage*
15 *that extends to the conservator, liquidator, receiver, or members*
16 *of the liquidating committee. The bond shall include fraud,*
17 *dishonesty, and faithful performance coverage. The premium for*
18 *that bond shall be paid out of the assets of the licensee.*

19 607. (a) *If the commissioner retains possession of the assets*
20 *of the licensee for the purpose of liquidation or conservation, the*
21 *commissioner shall, to the extent possible, use the services of civil*
22 *service employees of the commissioner's office, and the attorneys*
23 *employed by the commissioner or the Department of Justice shall*
24 *render all necessary legal services, as the commissioner may*
25 *request.*

26 (b) *The commissioner, from time to time, under his or her official*
27 *seal, may appoint one or more special deputy commissioners as*
28 *his or her agent or agents with the powers specified in the*
29 *certificate of appointment to assist him or her in the duties of*
30 *conservation or of liquidation and distribution. The certificate of*
31 *appointment shall be filed in the office of the commissioner and a*
32 *certified copy in the office of the clerk of the county in which the*
33 *head office of the licensee is located. The commissioner may*
34 *employ counsel and procure expert assistance and advice as may*
35 *be necessary in the liquidation and distribution of the assets of the*
36 *licensee and for that purpose may retain any of the officers or*
37 *employees of the licensee as the commissioner may deem necessary.*

38 608. *The compensation of civil service employees, special*
39 *deputies, counsel, and other employees and assistants appointed*
40 *to assist in the conservation or liquidation of any licensee and the*

1 *distribution of its assets and all expenses of supervision and*
2 *liquidation shall be fixed by the commissioner and shall be paid*
3 *out of the funds of the licensee in the hands of the commissioner.*
4 *The expenses of liquidation shall be reported to the court upon*
5 *each application for payment of a dividend.*

6 609. *If a licensee is not insured by a Federal Insurance Agency,*
7 *upon the commissioner taking possession of the business and*
8 *property of the licensee, the superior court of the State of*
9 *California for the county in which the head office of the licensee*
10 *is located shall have exclusive original jurisdiction of all*
11 *proceedings relating thereto and of any action or other proceedings*
12 *brought under the provisions of this article. All papers relating to*
13 *the proceeding, including copies of the certificate of appointment*
14 *of any special deputy and the inventories required to be filed, shall*
15 *be filed and be made a part of the record of the proceeding without*
16 *the payment of any additional fees. No damages may be awarded*
17 *in the proceeding but, if sought, may only be recovered in a*
18 *separate action.*

19

20 *Article 2. Conservation or Liquidation of an Insured Licensee*

21

22 620. *If the licensee whose property and business has been taken*
23 *pursuant to Section 592 is insured by a Federal Insurance Agency,*
24 *the commissioner may tender to the appropriate Federal Insurance*
25 *Agency an appointment as conservator, liquidator, or receiver of*
26 *the licensee. The commissioner shall determine whether the*
27 *licensee whose property and business has been taken shall be*
28 *liquidated or conserved. If the Federal Insurance Agency accepts*
29 *the appointment, the Federal Insurance Agency shall have, in*
30 *addition to any powers conferred by applicable federal law, the*
31 *powers conferred on the commissioner pursuant to this article.*

32 621. *The Federal Insurance Agency may be, and act as, a*
33 *conservator, liquidator, or receiver without bond.*

34 622. *If the Federal Insurance Agency accepts the appointment*
35 *in accordance with Section 621, the rights of customers and other*
36 *creditors of the insured licensee shall be determined in accordance*
37 *with the applicable provisions of the laws of this state.*

38 623. *The Federal Insurance Agency conservator, liquidator,*
39 *or receiver shall possess with respect to the insured licensee all*
40 *the powers, rights, and privileges given the commissioner under*

1 *this article with respect to the conservation or liquidation of a*
2 *licensee, as appropriate, and the property and assets of which he*
3 *or she has taken possession, except insofar as the same may be in*
4 *conflict with the provisions of applicable federal law.*

5 624. (a) *The commissioner may sell to any other licensee any*
6 *part or the whole of the business of a licensee that is subject to*
7 *liquidation or conservatorship. The purchase and sale shall be*
8 *approved by the purchasing licensee, as follows:*

9 (1) *If the purchasing licensee is organized under the laws of*
10 *this state, by two-thirds of all of its directors.*

11 (2) *If the licensee is any licensee other than a licensee organized*
12 *under the laws of this state, in accordance with the laws of the*
13 *jurisdiction under which the licensee is organized.*

14 (b) (1) *Subject to any applicable federal statutes and*
15 *regulations, any bank or credit union organized under the laws of*
16 *this state may, with the approval of two-thirds of all of its directors,*
17 *purchase from the receiver of a national banking association or*
18 *a federal credit union the whole or any part of the business of the*
19 *national banking association or federal credit union.*

20 (2) *Subject to any applicable federal statutes and regulations*
21 *and any applicable laws of the jurisdiction under which a foreign*
22 *corporation is organized, any foreign corporation or office of a*
23 *foreign corporation that is licensed by the commissioner to transact*
24 *business in this state and that is authorized to accept shares or*
25 *deposits in this state, may purchase from the receiver of a national*
26 *banking association or federal credit union the whole or any part*
27 *of the business of the national banking association or federal credit*
28 *union.*

29 (c) *The provisions of Chapter 12 (commencing with Section*
30 *1200) and Chapter 13 (commencing with Section 1300) of Division*
31 *1 of Title 1 of the Corporations Code shall not apply to any*
32 *purchase and sale of the type described in subdivision (a) or (b).*

33 (d) *When a purchase and sale of the type described in*
34 *subdivision (a) or (b) becomes effective, the licensee shall, ipso*
35 *facto and by operation of law and without further transfer,*
36 *substitution, act, or deed, to the extent provided in the agreement*
37 *of the purchase and sale or in the order of the court approving the*
38 *purchase and sale and except as withheld or limited by the*
39 *agreement or by the order:*

1 (1) Succeed to the rights, obligations, properties, assets,
2 investments, shares, deposits, demands, and agreements of the
3 licensee whose business is sold, subject to the right of every
4 customer of a licensee to withdraw his or her shares or deposit in
5 full on demand after the sale, irrespective of the terms under which
6 the share or deposit was made.

7 (2) Succeed to the rights, obligations, properties, assets,
8 investments, shares, deposits, demands, and agreements of the
9 licensee whose business is sold under all trusts, executorships,
10 administrations, guardianships, conservatorships, agencies, and
11 other fiduciary or representative capacities, to the same extent as
12 though the purchasing licensee had originally assumed, acquired,
13 or owned the same, subject to the rights of trustors and
14 beneficiaries under the trusts so sold to nominate another or
15 succeeding trustee of the trust so sold after the sale.

16 (3) Succeed to and be entitled to take and execute the
17 appointment to executorships, trusteeships, guardianships,
18 conservatorships, and other fiduciary and representative capacities
19 to which the licensee whose business is sold is or may be named
20 in wills, whenever probated, or to which it is or may be named or
21 appointed by any other instrument.

22 (e) For purposes of subdivision (d), any purchase and sale of
23 the type referred to in subdivision (d) shall be deemed to be
24 effective at the time provided in the agreement of the purchase and
25 sale or in the order of the court approving the purchase and sale.

26

27 Article 3. Conservatorship of an Uninsured Licensee

28

29 640. Whenever the commissioner deems it necessary in order
30 to conserve the assets of any licensee that does not have federal
31 deposit or share insurance for the benefit of the customers and
32 other creditors, he or she may appoint a conservator of the licensee
33 and require the conservator to post a bond as the commissioner
34 deems proper. The conservator, under the direction of the
35 commissioner, shall take possession of the books, records, and
36 assets of every description of the licensee and take any action as
37 the conservator may deem necessary to conserve the assets of the
38 licensee pending further disposition of its business.

39 641. A conservator appointed in accordance with Section 640
40 has all of the powers and rights with relation to the business and

1 *the property of the licensee for which he or she is appointed*
2 *conservator as are possessed by the commissioner under this*
3 *article with relation to a licensee of which the commissioner has*
4 *taken possession, and the conservator is subject to the same*
5 *obligations as are imposed upon the commissioner under this*
6 *article. During the time that the conservator remains in possession*
7 *of the licensee the rights of the licensee, and of all persons with*
8 *respect thereto, subject to the other provisions of this article, are*
9 *the same as if the commissioner had taken possession of the*
10 *property and business of the licensee for the purposes of*
11 *liquidation. All expenses of the conservatorship shall be paid out*
12 *of the assets of the licensee and shall be a lien thereon which shall*
13 *be prior to any other lien. The conservator shall receive a salary*
14 *in an amount no greater than that which would be paid by the*
15 *commissioner to a special deputy in charge of the liquidation of*
16 *a licensee.*

17 *642. The commissioner may order an examination at the*
18 *earliest possible date of a licensee for which the commissioner*
19 *has appointed a conservator.*

20 *643. While any licensee is in the hands of a conservator, the*
21 *commissioner may require the conservator to set aside and make*
22 *available for withdrawal by customers and for payment to other*
23 *creditors on a ratable basis such amounts as in the opinion of the*
24 *commissioner may safely be used for that purpose.*

25 *644. The commissioner, in his or her discretion, may permit*
26 *the conservator to receive shares or deposits, but any shares or*
27 *deposits received while the licensee is in the hands of a conservator*
28 *shall be held as trust funds and shall not be subject to any*
29 *limitation as to payment or withdrawal. The shares or deposits*
30 *shall be segregated and shall not be used to liquidate any*
31 *indebtedness of the licensee existing at the time the conservator*
32 *was appointed or for the payment of any later indebtedness*
33 *incurred for the purpose of liquidating any indebtedness of the*
34 *licensee existing at the time the conservator was appointed. The*
35 *shares or deposits shall be kept on hand in cash, invested in direct*
36 *obligations of the United States, or deposited with the Federal*
37 *Reserve Bank.*

38 *645. If the commissioner is satisfied that it may be done safely*
39 *and that it would be in the public interest, he or she may terminate*
40 *a conservatorship and permit the licensee for whom a conservator*

1 was appointed to resume the transaction of its business under the
2 direction of its board, subject to any terms, conditions, restrictions,
3 and limitations as the commissioner may prescribe.

4 646. The conservator of a licensee that has been permitted to
5 resume accepting member shares or deposits shall first cause a
6 notice to be published in a newspaper of local circulation. The
7 notice shall state the date on which the affairs of the licensee will
8 be returned to its board and that the provisions of Section 644 will
9 not be effective after 30 days from that date. The form of the notice
10 and the newspaper in which the same is to be published shall be
11 first approved by the commissioner. On the date of the publication
12 of the notice, the conservator shall mail a copy of the notice to
13 every person who made any deposit in the licensee after the date
14 of the appointment of the conservator. The conservator shall
15 address the copy of the notice to the persons who have made the
16 deposits at the addresses appearing upon the books of the licensee.
17 The conservator shall also mail a similar notice to every person
18 making a deposit in the licensee after the date of the publication
19 of the notice and before the affairs of the licensee are returned to
20 its board.

21 647. The commissioner may assess and collect from all
22 licensees for whom a conservator is appointed their ratable share
23 of the costs incurred in the administration of this article.

24 648. Any licensee that the commissioner has taken possession
25 of pursuant to Section 592, and for which a conservator has been
26 appointed pursuant to this article, may be reorganized under a
27 plan that requires the consent of any of the following:

28 (a) Customers and other creditors of the licensee representing
29 at least 75 percent in amount of its total member shares or deposits
30 and other liabilities as shown by the books of the licensee,
31 excluding member shares or deposits and other liabilities which
32 are to be satisfied in full under the provisions of the plan.

33 (b) Stockholders owning at least two-thirds of the outstanding
34 stock as shown by the books of the licensee.

35 (c) Members of the licensee.

36 (d) Customers and other creditors of the licensee representing
37 at least 75 percent in amount of its total shares or deposits and
38 other liabilities as shown by the books of the licensee, excluding
39 shares or deposits and other liabilities that are to be satisfied in
40 full under the provisions of the plan, and, if applicable to the

1 licensee, of stockholders owning at least two-thirds of its
2 outstanding stock as shown by the books of the licensee.

3 649. All customers, creditors, stockholders, if applicable, and
4 other interested persons shall be given notice of any proposed plan
5 of reorganization in the manner and at the times as the
6 commissioner directs.

7 650. No plan of reorganization shall become effective until the
8 commissioner finds that the plan is fair and equitable to all
9 customers, creditors, and stockholders, if applicable, and is in the
10 public interest and until the commissioner approves the same in
11 writing, subject to any conditions, restrictions, and limitations as
12 the commissioner may prescribe.

13 651. No creditor having security for the payment of his, her,
14 or its claim shall be affected in his, her, or its right to enforce the
15 security by the provisions of any plan for the reorganization of the
16 licensee. Any plan of reorganization involving the reduction of
17 claims of creditors shall apply only to that portion of a secured
18 creditor's loan that is not covered by the pledged security.

19 652. When any plan of reorganization becomes effective, all
20 books, records, and assets of the licensee shall be disposed of in
21 accordance with the provisions of the plan and the affairs of the
22 licensee shall be conducted by its board in the manner provided
23 by the plan and under the conditions, restrictions, and limitations
24 that may have been prescribed by the commissioner. When any
25 plan of reorganization adopted and approved as herein provided
26 becomes effective, all customers and other creditors and, if
27 applicable, stockholders of the licensee, whether or not they have
28 consented to the plan of reorganization, shall be fully and in all
29 respects subject to and bound by the plan's provisions and the
30 claims of all customers and other creditors shall be treated as if
31 they had consented to the plan of reorganization.

32

33 *Article 4. Liquidation of an Uninsured Licensee*

34

35 670. Upon taking possession of the property and business of
36 a licensee that does not have federal deposit or share insurance,
37 the commissioner may sell, compromise, or compound any bad or
38 doubtful debt owing the licensee for a principal sum not exceeding
39 ten thousand dollars (\$10,000), upon those terms as the
40 commissioner may deem proper. If the principal sum thereof

1 exceeds ten thousand dollars (\$10,000), the commissioner may
2 compromise, compound, or sell the debt upon those terms as the
3 court may approve. If it appears improbable that a recovery on a
4 debt can be had, and that the costs of an action to collect would
5 be lost, and the principal sum thereof does not exceed five hundred
6 dollars (\$500), the commissioner may determine that no suit
7 thereon shall be brought. If the principal sum of that debt exceeds
8 ten thousand dollars (\$10,000), the commissioner may determine
9 that no suit thereon be brought after obtaining approval of the
10 court.

11 671. The commissioner may sell any real or personal property
12 of the licensee for cash or on credit and on any other terms and
13 conditions as the commissioner may deem proper, subject to the
14 approval of the court.

15 672. (a) The commissioner may, with the approval of the court,
16 sell any part or the whole of the business of a licensee to any other
17 licensee. The purchase and sale shall be approved by the
18 purchasing licensee, as follows:

19 (1) If the purchasing licensee is organized under the laws of
20 this state, by two-thirds of all of its directors.

21 (2) If the licensee is any licensee other than a licensee organized
22 under the laws of this state, in accordance with the laws of the
23 jurisdiction under which the licensee is organized.

24 (b) (1) Subject to any applicable federal statutes and
25 regulations, any bank or credit union organized under the laws of
26 this state may, with the approval of two-thirds of all of its directors
27 and of the commissioner, purchase from the receiver of a national
28 banking association or a federal credit union the whole or any
29 part of the business of the national banking association or federal
30 credit union.

31 (2) Subject to any applicable federal statutes and regulations
32 and any applicable laws of the jurisdiction under which a foreign
33 corporation is organized, any foreign corporation or any office
34 of a foreign corporation that is licensed by the commissioner to
35 transact business in this state and that is authorized to accept
36 shares or deposits in this state, may, with the approval of the
37 commissioner, purchase from the receiver of a national banking
38 association or federal credit union the whole or any part of the
39 business of the national banking association or federal credit
40 union.

1 (c) *The provisions of Chapter 12 (commencing with Section*
2 *1200) and Chapter 13 (commencing with Section 1300) of Division*
3 *1 of Title 1 of the Corporations Code shall not apply to any*
4 *purchase and sale of the type described in subdivision (a) or (b).*

5 (d) *When a purchase and sale of the type described in*
6 *subdivision (a) or (b) becomes effective, the purchasing licensee*
7 *shall, by operation of law and without further transfer, substitution,*
8 *act, or deed, to the extent provided in the agreement of the*
9 *purchase and sale or in the order of the court approving the*
10 *purchase and sale and except as withheld or limited by the*
11 *agreement or by the order:*

12 (1) *Succeed to the rights, obligations, properties, assets,*
13 *investments, shares, deposits, demands, and agreements of the*
14 *licensee whose business is sold, subject to the right of every*
15 *customer of the licensee whose shares or deposit is sold to*
16 *withdraw his or her shares or deposit in full on demand after the*
17 *sale, irrespective of the terms under which the deposit was made.*

18 (2) *Succeed to the rights, obligations, properties, assets,*
19 *investments, shares, deposits, demands, and agreements of the*
20 *whose business is sold under all trusts, executorships,*
21 *administrations, guardianships, conservatorships, agencies, and*
22 *other fiduciary or representative capacities, to the same extent as*
23 *though the purchasing licensee had originally assumed, acquired,*
24 *or owned the same, subject to the rights of trustors and*
25 *beneficiaries under the trusts so sold to nominate another or*
26 *succeeding trustee of the trust so sold after the sale.*

27 (3) *Succeed to and be entitled to take and execute the*
28 *appointment to executorships, trusteeships, guardianships,*
29 *conservatorships, and other fiduciary and representative capacities*
30 *to which the licensee whose business is sold is or may be named*
31 *in wills, whenever probated, or to which it is or may be named or*
32 *appointed by any other instrument.*

33 (e) *For purposes of subdivision (d), any purchase and sale of*
34 *the type referred to in subdivision (d) shall be deemed to be*
35 *effective at the time provided in the agreement of the purchase and*
36 *sale or in the order of the court approving the purchase and sale.*

37 673. *Within six months after taking possession of the property*
38 *and business of any licensee that does not have federal deposit or*
39 *share insurance, the commissioner may terminate or adopt any*
40 *executory contract to which the licensee may be a party, including*

1 leases of real or personal property. Claims for damages resulting
2 from the termination of any contract or lease may be filed and
3 allowed, but no claim of a landlord for damages resulting from
4 the rejection of an unexpired lease of real property or under any
5 covenant of the lease shall be allowed in an amount exceeding the
6 rent reserved by the lease, without acceleration, for the year
7 succeeding the date of the surrender of the premises plus the
8 amount of any unpaid accrued rent without acceleration. Any claim
9 shall be filed within 30 days of the date of the termination or within
10 the time that claims are to be filed under Section 680, whichever
11 is longer.

12 674. The commissioner, in his or her own name or in the name
13 of the licensee, may execute, acknowledge, and deliver any and
14 all conveyances and other instruments necessary or appropriate
15 to effectuate the sale of any real or personal property or to
16 effectuate any other transaction in connection with the liquidation
17 of a licensee or the distribution of its assets. Any conveyance or
18 other instrument executed by the commissioner pursuant to this
19 authority shall be valid and effectual for all purposes as though
20 the same had been executed by the officers of the licensee by
21 authority of its board of directors. Whenever the commissioner
22 sells any real property of the licensee a certified copy of the order
23 of the court approving the sale shall be recorded in the county in
24 which any part of the real property is located.

25 675. The commissioner, in the name of the delinquent licensee
26 or in his or her own name, may prosecute and defend any and all
27 actions and other legal proceedings appropriate or necessary to
28 the liquidation of the licensee.

29 676. The commissioner from time to time shall deposit all
30 moneys coming into his or her hands in the course of the
31 liquidation of the licensee in one or more state banks or state credit
32 unions and in the event of the suspension or insolvency of the
33 depository shall be preferred before all other deposits.

34 677. The commissioner shall make an inventory of the assets
35 of the licensee in duplicate and file one in the office of the
36 commissioner and one with the clerk of the county in which the
37 head office of the licensee is located to be filed with the papers in
38 the liquidation proceedings. The inventory shall be open for
39 inspection at all reasonable times.

1 678. When the time fixed for the presentation of claims has
2 expired, the commissioner shall make in duplicate a full and
3 complete list of all claims presented, including and specifying
4 claims that have been rejected by the commissioner, and a list of
5 all claims of customers as shown by the books or records of the
6 licensee for which claims have not yet been presented, and shall
7 file one copy of the list in the commissioner's office and one with
8 the clerk of the county in which the head office of the licensee is
9 located to be filed with the papers in the liquidation proceedings.
10 Before each application to the court for leave to declare a dividend,
11 the commissioner shall file a supplemental list of claims presented
12 since the last preceding list was filed, including and specifying
13 any claims that have been rejected by him or her. The list of claims
14 and of claims of customers as shown by the books or records of
15 the licensee shall be open for inspection at all reasonable times.

16 679. The commissioner shall cause notice to be given by
17 advertisement in any newspapers of general circulation as he or
18 she may select weekly for three consecutive months, calling on all
19 persons who have claims against the licensee to present the same
20 to the commissioner and make legal proof thereof at a place to be
21 specified therein and within four months of the date of the first
22 publication of the notice, which date shall be specified in the notice.
23 The notice shall also state that all claims other than those of
24 customers appearing upon the books or records of the licensee
25 shall be forever barred if not filed within the four months' period
26 and that all claims of customers appearing upon the books or
27 records of the licensee will be forever barred, except as herein
28 provided, if not filed prior to the filing of a petition for a final
29 dividend. The commissioner shall also mail a similar notice to all
30 persons, including customers whose names appear as creditors
31 upon the books of the licensee and whose addresses appear upon
32 the books or records of the licensee, and shall enclose therewith
33 a printed form of notice of claim.

34 680. All claims of every kind against the licensee or against
35 any property owned or held by the licensee shall be presented to
36 the commissioner in writing verified by the claimant or someone
37 on his or her behalf within four months of the date of the first
38 publication of the notice to creditors. Any claim, other than the
39 claim of a customer whose claim appears upon the books or
40 records of the licensee, not presented within the four months'

1 *period shall be forever barred and any claim of a customer whose*
2 *claim appears upon the books or records of the licensee that is*
3 *not so presented prior to the date of the filing of the petition of the*
4 *commissioner with the court for approval of the payment of the*
5 *final dividend shall be forever barred except as to any moneys*
6 *remaining after all debts for which claims were duly filed have*
7 *been paid in full with interest. If the commissioner doubts the*
8 *validity of any claim, he or she may reject the claim and serve*
9 *notice of the rejection upon the claimant either by mail or*
10 *personally. An affidavit of the mailing or personal service of the*
11 *notice shall be prima facie evidence of the receipt thereof and shall*
12 *be filed with the commissioner. Any action upon a rejected claim*
13 *shall be brought within three months after the date of mailing or*
14 *personal service of the notice of rejection.*

15 *681. At any time and from time to time after the expiration of*
16 *the time fixed for the presentation of claims, the commissioner,*
17 *after obtaining approval of the court, may declare and pay one or*
18 *more dividends upon all approved claims out of the funds*
19 *remaining in his or her hands after the payment of expenses and*
20 *after setting aside an amount sufficient to pay to all customers,*
21 *who have not yet filed claims but whose claims appear upon the*
22 *books or records of the licensee, their pro rata share of the funds*
23 *then available for the payment of a dividend. At any time after the*
24 *expiration of one year from the date of the first publication of*
25 *notice to creditors and after obtaining the approval of the court,*
26 *the commissioner may declare and pay a final dividend.*

27 *682. (a) Expenses and claims of unsecured creditors have*
28 *priority in the following order:*

29 *(1) Expenses of liquidation and approved claims for fees and*
30 *assessments due the department.*

31 *(2) Approved claims given priority under other provisions of*
32 *state or federal law, including, but not limited to, Sections 676*
33 *and 710.*

34 *(3) Approved claims for “deposits,” as that term is defined in*
35 *12 U.S.C. Section 1813(l), but including obligations of the type*
36 *described in 12 U.S.C. Section 1813(l)(5)(A) and (B).*

37 *(4) Approved claims for other general liabilities.*

38 *(5) Approved claims for obligations subordinated to deposits*
39 *and other general liabilities.*

1 ***(b) Interest shall be given the same priority as the claim on***
2 ***which it is based, but no interest shall be paid on any claim until***
3 ***the principal of all claims within the same class has been paid or***
4 ***adequately provided for in full.***

5 ***(c) Any funds remaining shall be paid to the members or***
6 ***shareholders, as appropriate.***

7 ***683. Objections to any claim not rejected by the commissioner***
8 ***may be made by any person interested by filing a copy of the***
9 ***objection with the commissioner, who shall present the copy to***
10 ***the court at the time of the next application for approval of the***
11 ***declaration of a dividend. The court shall thereupon dispose of***
12 ***the objections or may order a reference for that purpose, and***
13 ***should the objections to any claim be sustained by the court or by***
14 ***the referee, the claim shall not be allowed by the commissioner***
15 ***until the claimant has established the claim by judgment.***

16 ***684. Dividends remaining unpaid and any sums available for***
17 ***payment of shares or deposits for which no claim was filed, which***
18 ***remain in the hands of the commissioner six months after the order***
19 ***for the payment of a final dividend, shall be deposited in the State***
20 ***Treasury. The shares or deposits shall be deemed to have been***
21 ***received under Chapter 7 (commencing with Section 1500) of Title***
22 ***10 of Part 3 of the Code of Civil Procedure, and shall be subject***
23 ***to claim or other disposition as provided in that chapter. The***
24 ***commissioner may pay over the moneys held by him or her to the***
25 ***persons respectively entitled thereto at any time prior to depositing***
26 ***the shares or deposits in the State Treasury, upon being furnished***
27 ***satisfactory evidence of the persons' right to the same.***

28 ***685. Whenever, under the provisions of this article, the***
29 ***commissioner is required to transmit unclaimed money or other***
30 ***unclaimed property to any state officer for deposit in the State***
31 ***Treasury, the commissioner, upon request of the Controller, shall***
32 ***transmit to the Controller all signature cards and any other***
33 ***identifying information available from the records of the licensee,***
34 ***covering the money or other property. Upon receipt by the***
35 ***Controller of the signature cards or other identifying information,***
36 ***the licensee and the commissioner shall be relieved of all***
37 ***responsibility therefor. The signature cards and other identifying***
38 ***information may be destroyed or otherwise disposed of by the***
39 ***Controller whenever, in his or her discretion, their further retention***

1 *by him or her is no longer required in the interest of the customers*
2 *or the state.*

3 *686. All approved claims of customers and other creditors*
4 *shall bear interest at the rate provided by law on judgments from*
5 *the date that the commissioner takes possession of the property*
6 *and business of the licensee.*

7 *687. If the licensee has in its possession for safekeeping or*
8 *storage any jewelry, plate, money, specie, bullion, stocks, bonds,*
9 *securities, valuable papers, or other valuable personal property,*
10 *or has rented any vaults, safes, or safe-deposit boxes, the*
11 *commissioner shall cause to be mailed, by registered mail, postage*
12 *prepaid, to any known person claiming to be or appearing on the*
13 *books of the licensee to be the owner of the property or to the*
14 *person in whose name the safe, vault, or box stands a notice*
15 *notifying the person to remove all of the personal property within*
16 *a specified fixed period of not less than 60 days.*

17 *688. On the last day fixed in the notice for the removal of the*
18 *property or on the date when the property is removed or the box*
19 *surrendered, any contract between the person owning the property*
20 *or holding the box and the licensee shall cease and the amount of*
21 *the unearned prepaid rent or charges, if any, shall become a debt*
22 *of the licensee to the person.*

23 *689. If any property is not removed within the time fixed by*
24 *the notice mailed by the commissioner, the commissioner may*
25 *dispose of the property as the court, on application thereto, shall*
26 *direct. The commissioner may cause any safe, vault, or box to be*
27 *opened in his or her presence or in the presence of one of the*
28 *special deputy commissioners and of a notary not an officer or*
29 *employee of the licensee or of the commissioner. The contents*
30 *thereof, if any, shall be sealed by the notary in a package upon*
31 *which the notary shall distinctly mark the name and address of*
32 *the person in whose name the safe or box stands upon the books*
33 *of the licensee and shall attach thereon a list and a description of*
34 *the property within the package. The package so sealed and*
35 *addressed, together with the list and description may be kept by*
36 *the commissioner in one or more of the safes or boxes of the*
37 *licensee or elsewhere until delivered to the person whose name it*
38 *bears or until otherwise disposed of as directed by the court.*

1 690. (a) When the commissioner has completed the liquidation
2 of the licensee, he or she shall petition the court for an order
3 declaring the licensee duly wound up and dissolved.

4 (b) After any notice as the court may direct and a hearing, the
5 court may make an order declaring the licensee duly wound up
6 and dissolved. The order shall declare all of the following:

7 (1) The licensee has been duly wound up.

8 (2) A final franchise tax return, if any, as described by Section
9 23332 of the Revenue and Taxation Code, has been filed with the
10 Franchise Tax Board as required under Part 10.2 (commencing
11 with Section 18401) of Division 2 of the Revenue and Taxation
12 Code, and any tax or penalty due under the Corporation Tax Law
13 has been paid, and the licensee's known debts and liabilities have
14 been paid or adequately provided for, or any taxes, penalties,
15 debts, and liabilities have been paid so far as the licensee's assets
16 permitted, as the case may be. If there are known debts or liabilities
17 for the payment of which adequate provision has been made, the
18 order shall describe the provision, setting forth any information
19 necessary to enable the creditor or other person to whom payment
20 is to be made to appear and claim payment of the debt or liability.

21 (3) All known assets of the licensee have been distributed to its
22 shareholders or wholly applied on account of the licensee's debts
23 and liabilities.

24 (4) The licensee is dissolved.

25 (c) The court may make additional orders and grant further
26 relief as it deems proper upon the evidence submitted.

27 (d) Upon the making of the order declaring the licensee
28 dissolved, the corporate existence of the licensee shall cease, except
29 for the purposes of any necessary further winding up.

30 (e) Upon the making of the order declaring the licensee
31 dissolved, the commissioner shall file with the Secretary of State
32 a copy of the order, certified by the clerk of the court.

33 691. Whenever this article requires court approval of any step
34 in the liquidation proceedings, approval shall be given after a
35 hearing upon notice as the court may direct. At the hearing, the
36 court may by order approve the actions of the commissioner for
37 which he or she has petitioned the court's approval or it may, by
38 appropriate order, otherwise direct the commissioner in the matter
39 in connection with which the petition was filed.

1 692. Whenever, in the opinion of the commissioner, the
2 liquidation or reorganization of any licensee taken in charge by
3 him or her would be facilitated, or the public interests and the
4 interests of customers or stockholders would be served, the
5 commissioner may borrow money on behalf of the licensee from
6 any federal agency authorized to lend money to receivers, trustees,
7 liquidating agents, or other agents or supervisory authorities in
8 charge of licensees that are closed or in process of liquidation
9 and, with approval of the court, the commissioner may secure any
10 borrowings by the pledge of the assets of the licensee in any
11 manner and amount the commissioner deems necessary, proper,
12 or expedient.

13

14 Article 5. Disposal of Unclaimed Trust Property

15

16 700. Whenever any licensee is being liquidated or whenever
17 the trust business of any licensee has been discontinued and the
18 licensee has in its possession money or other property held by it
19 in trust or for safekeeping and the beneficiaries or persons entitled
20 thereto are unknown or cannot be found, the commissioner or the
21 licensee, upon obtaining approval of the superior court of the
22 county in which the liquidation proceedings are pending or in
23 which the head office of the licensee is situated, may do the
24 following:

25 (a) In the case of money, deliver it to the Treasurer.

26 (b) In the case of other property, deliver it to the Controller for
27 deposit in the State Treasury.

28 701. Upon the delivery of any money to the Treasurer or upon
29 the delivery of any property to the Controller, a certified copy of
30 the order of the court approving the delivery shall be given to the
31 Controller, and upon the delivery of any money to the Treasurer
32 a notice giving the amount delivered shall be filed with the
33 Controller. Upon the receipt of any money or other properties, the
34 Treasurer or the Controller, as the case may be, shall issue a
35 receipt for the same and the receipt shall be deemed a voucher in
36 favor of the licensee to the same extent as though executed by the
37 beneficiary or other person entitled thereto.

38 702. All money or other property delivered to the Treasurer
39 or Controller pursuant to this article shall be deemed to be
40 delivered for deposit in the State Treasury under the provisions of

1 *Chapter 7 (commencing with Section 1500) of Title 10 of Part 3*
2 *of the Code of Civil Procedure and shall be subject to claim or*
3 *other disposition as provided in that chapter.*

4
5 *Article 6. Priorities*
6

7 *710. The holder or transferor of a negotiable instrument*
8 *transferred to a licensee for collection has a preferred claim in*
9 *the amount of the liability of the licensee on the instrument if the*
10 *instrument was forwarded to the licensee by any person or by any*
11 *other financial institution for collection and remittance, if payment*
12 *therefor has not been made and if the same has been collected*
13 *either in whole or in part by the licensee, unless the holder or*
14 *transferor is a voluntary depositor in the licensee and the proceeds*
15 *of the collection, at his or her request, have been credited by the*
16 *licensee to his or her account.*

17
18 *CHAPTER 9. VOLUNTARY LIQUIDATION*
19

20 *720. Any licensee that voluntarily has ceased to do the business*
21 *for which it is licensed shall immediately notify the commissioner*
22 *and proceed to liquidate its affairs. Any share or deposit or other*
23 *sum that has not been paid to the person entitled thereto within*
24 *six months after the licensee ceased to conduct a business shall*
25 *be paid into the State Treasury. The deposits with the State*
26 *Treasury shall be deemed to have been received under the*
27 *provisions of Chapter 7 (commencing with Section 1500) of Title*
28 *10 of Part 3 of the Code of Civil Procedure and shall be subject*
29 *to claim or other disposition as provided in that chapter. If the*
30 *commissioner has reason to conclude that the liquidation of the*
31 *licensee is not being safely or expeditiously conducted, he or she*
32 *may take possession of the business and property of the licensee*
33 *in the same manner and with the same effect and subject to the*
34 *same rights accorded the licensee as if he or she had taken*
35 *possession pursuant to Article 8 (commencing with Section 305),*
36 *and he or she may proceed to liquidate the licensee's affairs in*
37 *the same manner as provided in that article. When the licensee*
38 *has been completely liquidated, its corporate existence shall be*
39 *dissolved in the manner provided by law.*

1 721. If the licensee referred to in Section 720 is a
 2 state-chartered credit union and the commissioner has taken
 3 possession of the business and property of the credit union, the
 4 commissioner may appoint a liquidating agent or a liquidating
 5 committee of three members of the credit union to liquidate the
 6 business and assets of the credit union in the manner provided in
 7 Article 2 (commencing with Section 15250) of Chapter 9 of
 8 Division 5, except that, in lieu of the certificate required under
 9 Section 15252, the commissioner shall prepare and file in the office
 10 of the Secretary of State a certificate of commencement of
 11 liquidation proceedings upon taking possession of the business
 12 and assets, and the commissioner or his or her authorized deputy
 13 shall countersign the certificate referred to in Sections 15257 and
 14 15258 whenever liquidation is involuntary. The commissioner
 15 may, however, prepare and file a final certificate whenever he or
 16 she retains possession of the assets of any credit union for the
 17 purpose of liquidation. The liquidating agent need not be a member
 18 of the credit union to be liquidated and may be a person, firm, or
 19 corporation, as determined by the commissioner.

20
 21 *CHAPTER 10. APPROVAL OF NAMES OF NONBANK*
 22 *CORPORATIONS*
 23

24 730. In this chapter:

25 (a) “Nonbank corporation” means any corporation incorporated
 26 or proposed to be incorporated under the laws of this state, other
 27 than (1) any bank or (2) any corporation incorporated or
 28 proposed to be incorporated under the laws of this state for the
 29 purpose of transacting business under Article 1 (commencing with
 30 Section 1850) of Chapter 21 of Division 1.1.

31 (b) “Subject name”, means a name of a nonbank corporation
 32 which, as set forth, or as proposed to be set forth, in the articles
 33 of such nonbank corporation, includes “bank,” “trust,” “trustee,”
 34 or related words.

35 731. An application for a certificate of approval of the subject
 36 name of a nonbank corporation shall be in such form, shall contain
 37 such information, shall be signed in such manner, and shall (if the
 38 commissioner so requires by regulation or order) be verified in
 39 such manner, as the commissioner may by regulation or order
 40 require.

1 732. *The fee for filing with the commissioner an application*
2 *for a certificate of approval of the subject name of a nonbank*
3 *corporation shall be twenty-five dollars (\$25).*

4 733. *If the commissioner finds, with respect to an application*
5 *for a certificate of approval of the subject name of a nonbank*
6 *corporation, that the subject name does not indicate that the*
7 *nonbank corporation is engaged in the banking, industrial banking,*
8 *or trust business, the commissioner shall issue a certificate of*
9 *approval of the subject name. If the commissioner finds otherwise,*
10 *the commissioner shall deny the application.*

11 734. *Promptly after the articles of a nonbank corporation, with*
12 *the certificate of approval of the subject name of such nonbank*
13 *corporation attached thereto, are filed with the Secretary of State,*
14 *such nonbank corporation shall file with the commissioner a copy*
15 *of such articles certified by the Secretary of State.*

16
17 *CHAPTER 11. LEGAL INVESTMENTS FOR NONBANK LICENSEES*
18

19 800. *As used in this chapter, unless the context requires*
20 *otherwise, the following terms have the following meanings:*

21 (a) *“Net direct debt” of any public corporation means all*
22 *indebtedness of every kind after deducting from the indebtedness*
23 *sinking funds available for the payment thereof, any indebtedness*
24 *evidenced by tax anticipation notes for the payment of which*
25 *nondelinquent taxes are pledged, obligations payable only from*
26 *special assessments, revenue obligations payable only from special*
27 *revenues pledged for their payment, and such proportion of any*
28 *indebtedness issued for revenue producing works, properties, or*
29 *utilities that have been in operation for at least one year as the*
30 *amount of the annual net revenue therefrom bears to the amount*
31 *of the annual debt service requirements of those bonds.*

32 (b) *“Net overlapping debt” of any public corporation means*
33 *the proportion of the net direct debt as above defined of any other*
34 *public corporation (herein called overlapping corporation) that*
35 *lies wholly or partially within the boundaries of the public*
36 *corporation as the assessed valuation of the taxable property of*
37 *the overlapping public corporation lying within the boundaries of*
38 *the public corporation as shown by the last official equalized*
39 *county assessment roll bears to the assessed valuation of all taxable*

1 *property of the overlapping public corporation as shown by the*
2 *last official equalized county assessment roll.*

3 (c) *“Funded debt,” as used in this chapter, means all*
4 *interest-bearing indebtedness of a corporation not maturing within*
5 *one year of the date the indebtedness was incurred.*

6 801. *Any securities or other assets that are described in*
7 *Sections 803 to 819, inclusive, are legal investments for savings*
8 *banks.*

9 802. *Where any laws of this state provide that the moneys of*
10 *any pension fund, retirement plan, trust fund, or the moneys of any*
11 *special fund the investment of which is governed by law, or the*
12 *funds of any political subdivision or public corporation may or*
13 *shall be invested in securities which are a legal investment for*
14 *savings banks, that law shall be deemed to authorize or require,*
15 *as the case may be, that those moneys be invested in securities in*
16 *which savings banks were authorized to invest their funds by the*
17 *provisions of the Bank Act as it read prior to January 1, 1949,*
18 *other than paragraph (f) of subdivision 5 of Section 61 of that act,*
19 *or in bonds, debentures, and notes legal for investments for savings*
20 *banks in the State of New York or the State of Massachusetts as*
21 *of the time the investment is made or in securities in which*
22 *commercial banks are authorized to invest their funds by the*
23 *provisions of Sections 803 to 819, inclusive.*

24 803. *Gold and silver bullion and United States mint certificates*
25 *of ascertained value.*

26 804. *Stock of a federal reserve bank or of a federal home loan*
27 *bank to the extent authorized by Section 1325.*

28 805. *Bonds or other interest-bearing notes and obligations of*
29 *the United States and those for which the faith and credit of the*
30 *United States are pledged for the payment of principal and interest.*

31 806. *Bonds of the State of California and those for which the*
32 *faith and credit of the State of California are pledged for the*
33 *payment of principal and interest and in registered warrants of*
34 *the State of California.*

35 807. *Bonds of any flood control and water conservation*
36 *districts, or any zone thereof, having an assessed valuation on*
37 *taxable real property of not less than one million dollars*
38 *(\$1,000,000), county, city and county, city, metropolitan water*
39 *district, municipal utility district, special districts established by*
40 *and within any municipal utility district, transit district, rapid*

1 transit district including sales tax revenue bonds of the district,
2 metropolitan transit authority, flood control district, or school
3 district of the State of California (herein referred to generally as
4 public corporation) except the bonds of any particular such public
5 corporation which may be declared ineligible for investment by
6 savings banks by regulations of the commissioner.

7 808. Bonds of any other political subdivision, public
8 corporation, or district of the State of California (herein referred
9 to generally as public corporations) having the power, without
10 limit as to rate or amount; to levy taxes to pay the principal and
11 interest of the bonds upon all property within its boundaries subject
12 to taxation by such public corporation, provided the net direct
13 debt of such public corporation together with its net overlapping
14 debt does not exceed 25 percent of the assessed valuation of the
15 taxable property within its boundaries according to the last official
16 equalized county assessment roll.

17 809. (a) Any of the following subject to the conditions set forth
18 in subdivision (b) to (d), inclusive.

19 (1) Bonds or other evidences of indebtedness of, or which are
20 unconditionally guaranteed by the Dominion of Canada, the State
21 of Israel, the United States of Mexico, the Commonwealth of Puerto
22 Rico, or any state of the United States other than California, for
23 the payment of both principal and interest of which in United States
24 dollars, the faith and credit of the entity is pledged.

25 (2) Limited obligations of any state of the United States, other
26 than California, or the Commonwealth of Puerto Rico, payable
27 only from special taxes that are pledged to the payment of principal
28 and interest of the limited obligations.

29 (3) Bonds or other evidences of indebtedness of any city, county,
30 political subdivision, public corporation, or district (herein
31 referred to generally as public corporations) of any state of the
32 United States, other than California, or of the Dominion of Canada,
33 or of the State of Israel, or of the United States of Mexico or of the
34 Commonwealth of Puerto Rico, having the power without limit as
35 to rate or amount to levy taxes to pay the principal and interest of
36 the bonds upon all property within its boundaries subject to
37 taxation by the public corporation.

38 (b) In the case of bonds constituting general obligations of any
39 such state, commonwealth, dominion, or country, such state,
40 commonwealth, dominion, or country has not within 10 years prior

1 to the investment defaulted for a period of more than 90 days in
2 the payment of any part of either principal or interest of any of its
3 debts.

4 (c) In the case of limited obligations of any state, or
5 commonwealth, all of the following conditions are met:

6 (1) The state or commonwealth has not, within 10 years prior
7 to the date of the investment, defaulted for a period of more than
8 90 days in the payment of either principal or interest of any of its
9 debts.

10 (2) The special taxes pledged for the payment of the limited
11 obligations shall have been collected for five years and shall have
12 averaged at least one and one-half times the debt service
13 requirements, including those for principal, interest, and sinking
14 fund, on all special obligations existing at the time.

15 (3) The special taxes for each of the five fiscal years shall have
16 equaled at least the amount of all the debt service requirements
17 on the special obligations.

18 (d) In the case of bonds or other evidences of indebtedness of
19 any public corporation of any state other than California, or of
20 any commonwealth, all of the following conditions are met:

21 (1) The public corporation has had a corporate existence or
22 been otherwise established and functioning for at least 10 years
23 prior to the time of the investment.

24 (2) The public corporation has a population of at least 50,000
25 inhabitants according to the last federal or state census.

26 (3) The public corporation for a period of at least 10 years prior
27 to the investment has not defaulted in the payment of any part of
28 the principal or interest of any of its debts for a period of more
29 than 90 days.

30 (4) The net direct debt together with the net overlapping debt
31 of the public corporation does not exceed 10 percent of the
32 assessed valuation of the property subject to taxation by the public
33 corporation according to the last official equalized assessment
34 roll or list upon the basis of which taxes for debt service are based.

35 810. Bonds of any irrigation district, water storage district,
36 water conservation district, county water district, reclamation
37 district, drainage district, and any district the primary function of
38 which is the irrigation, reclamation or drainage of land within its
39 boundaries, located in California, other than bonds referred to in
40 Section 807, provided either of the following conditions are met:

1 (a) *The bonds qualify under Section 808.*

2 (b) *The bonds have been certified as legal securities for savings*
3 *banks pursuant to Chapter 1 (commencing with Section 20000) of*
4 *Division 10 of the Water Code and the certification remains*
5 *unrevoked and the total outstanding bonded indebtedness of the*
6 *district including bonds authorized but not issued, but excluding*
7 *bonds payable solely from revenues and not directly or indirectly*
8 *from assessments, does not exceed 50 percent of the aggregate of*
9 *the assessed value of the lands, exclusive of improvements, subject*
10 *to assessment by the district, and the value of the property owned*
11 *by the district or to be acquired or constructed with the proceeds*
12 *of the bonds under consideration.*

13 811. (a) *Bonds, consolidated bonds, collateral trust debentures,*
14 *consolidated debentures, or other obligations issued by federal*
15 *land banks or federal intermediate credit banks established under*
16 *the Federal Farm Loan Act, as amended, and the Farm Credit Act*
17 *of 1971.*

18 (b) *Debentures and consolidated debentures issued by the*
19 *Central Bank for Cooperatives and banks for cooperatives*
20 *established under the Farm Credit Act of 1933, as amended, and*
21 *the Farm Credit Act of 1971.*

22 (c) *Bonds or debentures of the Federal Home Loan Bank Board*
23 *established under the Federal Home Loan Bank Act.*

24 (d) *Bonds of any federal home loan bank established under the*
25 *Federal Home Loan Bank Act.*

26 (e) *Stocks, bonds, debentures, participations and other*
27 *obligations of or issued by the Federal National Mortgage*
28 *Association, the Student Loan Marketing Association, the*
29 *Government National Mortgage Association and the Federal Home*
30 *Loan Mortgage Corporation.*

31 812. *Bonds, notes or other obligations issued by the Federal*
32 *Financing Bank, the United States Postal Service, or issued or*
33 *assumed by the International Bank for Reconstruction and*
34 *Development, the Tennessee Valley Authority, the Inter-American*
35 *Development Bank, the Government Development Bank for Puerto*
36 *Rico, the Asian Development Bank, the International Finance*
37 *Corporation, or the African Development Bank.*

38 813. (a) *Notes with a maturity not exceeding 15 months after*
39 *the date of issue, issued in anticipation of uncollected taxes,*
40 *income, revenue, cash receipts, and other moneys of the State of*

1 California or any city, county, city and county, or school district
2 thereof; provided the notes and warrants and the interest thereon
3 shall be a first lien and charge against, and shall be payable from,
4 the first moneys received by the local agency from such pledged
5 moneys; provided the total amount of the notes issued at any one
6 time or during any specified period does not exceed 85 percent of
7 the receipts or revenues.

8 (b) Grant anticipation notes issued by the agencies and payable
9 not later than 36 months after the date of issue, provided that the
10 total amount of the notes and interest payable thereon issued at
11 any one time or during any specified period does not exceed 80
12 percent of the grant funds stated in writing by the granting
13 authority as committed or appropriated, and shall be paid on a
14 specified date or dates within a 36-month period from the dating
15 of the notes.

16 814. Revenue securities of any state of the United States, or of
17 the Commonwealth of Puerto Rico, and of any city, county, city
18 and county, political subdivision, public corporation, or district
19 (herein referred to generally as public corporations) of any state
20 or commonwealth and of any department, board, agency, or
21 authority of any state or commonwealth or of any public
22 corporation, if the following conditions are met:

23 (a) The revenue securities constitute obligations payable out of
24 the revenues from a revenue-producing property owned, controlled,
25 or operated by a state, commonwealth, public corporation, or by
26 a department, board, agency, or authority thereof and are secured
27 by the revenues.

28 (b) Either of the following paragraphs apply:

29 (1) (A) The net income from the property available for the
30 payment of the securities for the five fiscal years next preceding
31 any such investment, shall have averaged at least one and one-tenth
32 times all debt service requirements for principal, interest, and
33 sinking fund of all revenue securities payable only out of the
34 revenues from that property during each of those fiscal years, and
35 for each of the five fiscal years shall have equaled at least all debt
36 service requirements for principal, interest, and sinking fund of
37 the securities, and for the last fiscal year shall have amounted to
38 at least the maximum annual debt service requirement for any
39 fiscal year thereafter on all such securities that were outstanding

1 *during such last fiscal year and which will be outstanding in any*
2 *fiscal year thereafter.*

3 *(B) The gross income from the property, the net income from*
4 *which is pledged for the payment of the securities, in the last fiscal*
5 *year prior to the investment was not less than one million dollars*
6 *(\$1,000,000) if located in California, and was not less than five*
7 *million dollars (\$5,000,000) if located elsewhere.*

8 *(C) The issuer is obligated to maintain rates at least sufficient*
9 *to meet debt service requirements and such obligation is legally*
10 *enforceable.*

11 *(2) (A) The issuer of the securities is entitled to receive under*
12 *a legally enforceable contract with a corporation any of the*
13 *securities of which are a legal investment for savings banks under*
14 *this chapter annual payments averaging not less than nine hundred*
15 *thousand dollars (\$900,000) a year commencing with the*
16 *completion of a project or projects as fixed in the construction*
17 *contract therefor and continuing during the maximum term for*
18 *which said revenue securities are to mature.*

19 *(B) The issuer of the securities is obligated to maintain rates*
20 *to produce revenue, or will receive contract payments, either or*
21 *both of which will be sufficient to meet debt service requirements*
22 *and such obligation or contract is legally enforceable.*

23 *(c) The public corporation or any department, board, agency,*
24 *or authority thereof which issues the securities, if existing*
25 *elsewhere than in California, has not within 10 years prior to such*
26 *investment defaulted for a period of more than 90 days in the*
27 *payment of principal or interest on any of its debts.*

28 *815. Bonds of any local public housing agency (as defined in*
29 *the United States Housing Act of 1937, as amended) that are*
30 *secured by either of the following:*

31 *(a) An agreement between the public housing agency and the*
32 *Public Housing Administration in which the public housing agency*
33 *agrees to borrow from the Public Housing Administration, and*
34 *the Public Housing Administration agrees to lend to the public*
35 *housing agency, prior to the maturity of the obligations (which*
36 *obligations shall have a maturity of not more than 18 months),*
37 *moneys in an amount that (together with any other moneys*
38 *irrevocably committed to the payment of interest on such*
39 *obligations) will suffice to pay the principal of the obligations with*
40 *interest to maturity thereon, which moneys under the terms of the*

1 agreement are required to be used for the purpose of paying the
2 principal of and the interest on such obligations at their maturity.

3 (b) A pledge of annual contributions under an annual
4 contributions contract between such public housing agency and
5 the Public Housing Administration if the contract shall contain
6 the covenant by the Public Housing Administration that is
7 authorized by subsection (b) of Section 22 of the United States
8 Housing Act of 1937, as amended, and if the maximum sum and
9 the maximum period specified in such contract pursuant to that
10 subsection 22(b) shall not be less than the annual amount and the
11 period for payment that are requisite to provide for the payment
12 when due of all installments of principal and interest on the
13 obligations.

14 816. Bonds secured by an insurance commitment of the Federal
15 Housing Administration.

16 817. Evidences of indebtedness of companies incorporated in
17 the United States and, directly or indirectly, engaged in
18 manufacturing, extraction, merchandising, or commercial financing
19 and in bonds of authorities established pursuant to the California
20 Industrial Development Financing Act (Title 10 (commencing with
21 Section 91500) of the Government Code), to which these companies
22 are obligated with respect to payment subject to the following
23 conditions:

24 (a) Any unsecured evidences of indebtedness shall be issued by
25 a company substantially all of whose property is free of mortgage
26 and shall carry a covenant by the obligor that they will be secured
27 equally with any mortgage bond, except a purchase money
28 mortgage, which may be later issued.

29 (b) The company is of a size as to attract at least statewide
30 interest in its publicly held securities and its gross income shall
31 have averaged not less than ten million dollars (\$10,000,000) and
32 its net income shall have averaged not less than one million dollars
33 (\$1,000,000) for the five fiscal years preceding the investment and
34 its gross income was not less than ten million dollars (\$10,000,000)
35 and its net income not less than one million dollars (\$1,000,000)
36 for at least three of these five fiscal years.

37 (c) Working capital, as measured by consolidated current assets
38 less consolidated current liabilities as shown in the latest published
39 balance sheet, shall exceed 150 percent of the total of consolidated
40 debt due in longer than one year and "minority interest." For that

1 *purpose, “minority interest” means any outstanding interest in a*
2 *subsidiary having a prior claim on the earnings of the subsidiary.*
3 *However, the foregoing ratio requirement shall not apply in the*
4 *case of evidences of indebtedness of any corporation whose*
5 *consolidated gross assets less any valuation reserves exceed five*
6 *hundred million dollars (\$500,000,000) and whose consolidated*
7 *current assets exceed consolidated current liabilities by at least*
8 *one hundred million dollars (\$100,000,000) as shown by the latest*
9 *published balance sheet. When new financing is involved, the*
10 *changes in gross assets, capital structure and working capital*
11 *shall be considered and reliance may be placed on the*
12 *representations made in the official prospectus prepared under*
13 *the rules of the Securities and Exchange Commission as to the*
14 *application of the proceeds of the financing.*

15 *(d) The total consolidated debt of the company including current*
16 *liabilities and “minority interest,” as shown on the latest published*
17 *balance sheet, does not exceed 33 ¹/₃ percent of its gross assets less*
18 *valuation reserves.*

19 *(e) The consolidated annual net income for the five fiscal years*
20 *next preceding the investment, before deduction of state and federal*
21 *taxes imposed on or measured by income or profits but after*
22 *deducting all charges, including reserves, regularly recurring*
23 *charges for amortization of discount, and expense allocable to*
24 *funded debt (1) shall have averaged not less than six times the*
25 *annual consolidated interest charges existing at the time the*
26 *investment is made; (2) in at least three of the five fiscal years*
27 *shall have been at least four times the annual consolidated interest*
28 *charges for the same year; and (3) for the fiscal year next*
29 *preceding the investment shall have been not less than six times*
30 *the consolidated interest charges for that year and not less than*
31 *six times the annual consolidated charges on the funded debt*
32 *outstanding at the time of the investment.*

33 *818. Fixed interest railroad bonds meeting the requirements*
34 *of subdivisions (a) and (b); bonds secured by a mortgage on jointly*
35 *operated railroad facilities meeting the requirements of subdivision*
36 *(c); and railroad equipment trust certificates meeting the*
37 *requirements of subdivision (d).*

38 *(a) The railroad bonds are issued by or are assumed,*
39 *guaranteed, or provision made unconditionally for the payment*

1 of principal and interest on specified dates, by a solvent railroad
2 company that meets all of the following conditions:

3 (1) Operates at least 500 miles of standard gauge road within
4 the continental United States and which has had average annual
5 operating revenues of at least ten million dollars (\$10,000,000)
6 during the five years next preceding the investment.

7 (2) Has an average annual balance of income available for
8 fixed charges for the last 15 years for which the necessary
9 statistical data are available, when divided by an amount equal
10 to its fixed charges for the last fiscal year, shall produce a quotient
11 which is at least 15 percent higher than the quotient obtained by
12 dividing the average annual balance of income available for fixed
13 charges of all class 1 railroads for the same one 5-year period by
14 an amount equal to the fixed charges of all class 1 railroads for
15 the last year in the period.

16 (3) Has an average “balance of net income” (computed by
17 deducting the sum of its fixed charges and contingent interest
18 charges for the latest fiscal year from the average annual balance
19 available for fixed charges for the latest 15 years for which the
20 necessary statistical data are available) when divided by its
21 average annual railroad operating income for the same 15-year
22 period, shall produce a quotient at least 15 percent greater than
23 the quotient obtained by dividing the average balance of income
24 of all class 1 railroads, computed in the same manner, by the
25 average annual railway operating income of all class 1 railroads
26 for the same 15-year period.

27 (4) Has an average balance of income available for fixed
28 charges for the last three fiscal years preceding the investment
29 that has not been less than one and one-half times its fixed charges
30 for the last fiscal year.

31 (b) The railroad bonds are secured by any of the following:

32 (1) A mortgage, either direct or collateral, which shall be a first
33 mortgage on not less than 75 percent of the mileage subject to the
34 mortgage.

35 (2) A first mortgage on terminal properties comprising the
36 company’s principal freight or passenger terminal in a city of not
37 less than 250,000 population according to the latest federal or
38 state census.

39 (3) A refunding mortgage on not less than 75 percent of the
40 railroad mileage owned or operated by the issuing company under

1 *which bonds may be issued for retirement or refunding of all debts*
2 *secured by prior liens on all or any part of the property (other*
3 *than liens on equipment) subject to the mortgage; provided, that*
4 *the amount of debt senior to the refunding mortgage is not more*
5 *than 50 percent of the sum of all senior debt and the refunding*
6 *mortgage, or that underlying mortgage bonds in an amount equal*
7 *to at least 50 percent of the debt outstanding under the refunding*
8 *mortgage are pledged as security under the refunding mortgage.*

9 (4) *A first mortgage on railroad property leased to and operated*
10 *by the company where the lease extends beyond the maturity date*
11 *of the bonds and the company has guaranteed, assumed, or*
12 *committed itself under the terms of the lease to pay principal and*
13 *interest on the bonds.*

14 (c) *Bonds secured by a mortgage on jointly operated railroad*
15 *facilities must be secured by a first mortgage on a terminal, depot,*
16 *tunnel, or bridge used by or leased to two or more railroads which*
17 *have jointly and severally agreed unconditionally to pay the*
18 *interest and principal of the bonds or have unconditionally*
19 *guaranteed or assumed such payment, one of which railroads must*
20 *meet the requirements set forth in subdivision (a).*

21 (d) *Railroad equipment trust certificates must be issued by a*
22 *solvent class 1 railroad whose average balance of income available*
23 *for fixed charges for the last three fiscal years preceding the*
24 *investment shall be not less than one and one-half times its fixed*
25 *charges for the last fiscal year. The certificates must be issued to*
26 *provide funds for the construction or acquisition of new standard*
27 *gauge railroad equipment made with the approval of the Interstate*
28 *Commerce Commission and be secured by equipment trust, lease,*
29 *conditional sales contract, or first lien on such equipment. The*
30 *aggregate principal amount of such obligations shall not exceed*
31 *80 percent of the purchase price of the equipment and the*
32 *certificates shall mature within 15 years from date of issuance in*
33 *equal annual, semiannual, or monthly installments, beginning not*
34 *later than one year after the date of issuance.*

35 (e) *As used in this section, the terms “balance of income*
36 *available for fixed charges,” “fixed charges,” “contingent*
37 *interest,” and “railway operating income” shall have the same*
38 *meaning as in the accounting reports filed by common carriers by*
39 *rail pursuant to regulations of the Interstate Commerce*
40 *Commission except that “balance of income available for payment*

1 of fixed charges” shall be computed before deduction of federal
2 income or excess profits taxes, and “fixed charges” and
3 “contingent interest” of the railroad shall be such charges existing
4 as of the time the computation is made excluding charges with
5 respect to debt which has been retired or will be retired within six
6 months and for the payment of which funds have been or are
7 contemporaneously being set aside in trust but including charges
8 with respect to new debt issued or in the process of being issued.

9 819. Bonds and debentures of gas, electric, or gas and electric
10 companies meeting the requirements of subdivision (a); bonds and
11 debentures of telephone companies meeting the requirements of
12 subdivision (b); and bonds and debentures of water companies
13 meeting the requirements of subdivision (c).

14 (a) Bonds or debentures of a gas, electric, or gas and electric
15 company shall be of an issue that originally amounted to not less
16 than one million dollars (\$1,000,000) and, if bonds, be secured
17 by a mortgage on substantially all of its physical property, and, if
18 debentures, shall be issued by a company substantially all of whose
19 physical property is free of mortgage and must carry a covenant
20 to be secured equally with any mortgage indebtedness, except a
21 purchase money mortgage, subsequently issued, and both bonds
22 and debentures shall be issued by a public utility corporation that
23 meets all of the following conditions:

24 (1) Derives more than 50 percent of its gross operating revenue
25 from the business of supplying electricity, artificial gas, or natural
26 gas or all or any of them, and at least 80 percent of its gross
27 operating revenue from all or any of the public utility businesses
28 enumerated in this section.

29 (2) Shall have had a gross operating revenue of not less than
30 seven million five hundred thousand dollars (\$7,500,000) for its
31 most recent fiscal year.

32 (3) Has a funded debt not exceeding two-thirds of the value of
33 its physical property as shown by the books of the corporation or
34 by a statement of a certified public accountant issued within one
35 year, which statement may be based upon the books of the
36 corporation, less the amount of any reserves for depreciation,
37 retirement, or amortization of that physical property. Physical
38 property of a corporation shall include the physical property of a
39 subsidiary corporation if the corporation owns not less than 90

1 *percent of the outstanding voting shares of the subsidiary*
2 *corporation.*

3 *(4) Shall have had earnings including earnings of subsidiaries*
4 *mentioned in paragraph (3), available for interest payments, before*
5 *deduction of state and federal taxes imposed on or measured by*
6 *income or profits, during four of the five most recent fiscal years*
7 *and during the most recent fiscal year equal to at least twice the*
8 *existing annual interest charges on the corporation's total funded*
9 *debt during those respective fiscal years.*

10 *(b) Bonds or debentures of telephone companies shall be of an*
11 *issue originally amounting to at least one million dollars*
12 *(\$1,000,000) and, if bonds, be secured by a mortgage on*
13 *substantially all of the physical property of the company, and if*
14 *debentures shall be issued by a company substantially all of whose*
15 *physical property is free of mortgage and shall carry a covenant*
16 *to be secured equally with any mortgage indebtedness, except a*
17 *purchase money mortgage, subsequently issued, and both bonds*
18 *and debentures shall be issued by a company that meets all of the*
19 *following conditions:*

20 *(1) During its last fiscal year had gross revenues of at least*
21 *seven million five hundred thousand dollars (\$7,500,000), more*
22 *than 50 percent of which was derived from owned properties used*
23 *in furnishing telephone and other communication services and at*
24 *least 80 percent of its gross revenues from all or any of the public*
25 *utility businesses enumerated in this section.*

26 *(2) Whose funded debt does not exceed two-thirds of the value*
27 *of its physical property as shown by the books of the corporation*
28 *or by a statement of a certified public accountant issued within*
29 *one year, which statement may be based upon the books of the*
30 *corporation, less the amount of any reserves shown on the*
31 *statement for depreciation, retirement or amortization of such*
32 *physical property. Physical property of a corporation shall include*
33 *the physical property of a subsidiary corporation if the corporation*
34 *owns not less than 90 percent of the outstanding voting shares of*
35 *the subsidiary corporation.*

36 *(3) Which for four of the five most recent fiscal years and for*
37 *the last fiscal year had earnings including earnings of subsidiaries*
38 *mentioned in paragraph (2) available for the payment of interest*
39 *charges, before deduction of state and federal taxes imposed on*
40 *or measured by income or profits, at least equal to twice the*

1 *interest charges on the company's total funded debt during such*
 2 *respective fiscal years.*

3 *(c) Water company bonds or debentures shall be of an issue*
 4 *originally amounting to at least one million dollars (\$1,000,000)*
 5 *and if bonds, be secured by a first mortgage on the company's*
 6 *property, and if debentures, shall be issued by a company*
 7 *substantially all of whose property is free of mortgage and shall*
 8 *carry a covenant to be secured equally with any mortgage*
 9 *indebtedness, except a purchase money mortgage, subsequently*
 10 *issued, and both bonds and debentures shall be issued by a*
 11 *company that meets all of the following conditions:*

12 *(1) Is the supplier of substantially all water for domestic use in*
 13 *a community or communities having a population of not less than*
 14 *25,000.*

15 *(2) Whose funded debt does not exceed two-thirds of the value*
 16 *of its physical property as shown by the published statement of the*
 17 *company for its next preceding fiscal period, less the amount of*
 18 *any reserves shown for depreciation, retirement or amortization*
 19 *of such physical property. Physical property of a corporation shall*
 20 *include the physical property of a subsidiary corporation if the*
 21 *corporation owns not less than 90 percent of the outstanding voting*
 22 *shares of the subsidiary corporation.*

23 *(3) Which for four out of the five most recent fiscal years and*
 24 *for the most recent fiscal year shall have had earnings including*
 25 *those of subsidiaries mentioned in paragraph (2) available for the*
 26 *payment of interest charges, before deduction of state and federal*
 27 *taxes imposed on or measured by income or profits, of at least one*
 28 *and one-half times the interest charges on the company's total*
 29 *funded debt during the respective fiscal years.*

30 *SEC. 3. Division 1.1 (commencing with Section 1000) is added*
 31 *to the Financial Code, to read:*

32
 33 *DIVISION 1.1. BANKING*

34
 35 *CHAPTER 1. GENERAL PROVISIONS*

36
 37 *1000. When authorized by the commissioner as provided in*
 38 *Chapter 3 (commencing with Section 1040) a corporation may be*
 39 *formed by one or more persons in accordance with the laws of this*
 40 *state for the purpose of conducting a commercial banking business*

1 *or a trust business, or both of them. The qualification requirements*
2 *of the Corporate Securities Law of 1968 shall not apply to the*
3 *offer and sale of securities issued by and representing an interest*
4 *in or a direct obligation of a bank or trust company incorporated*
5 *under the laws of this state if the securities are offered and sold*
6 *pursuant to the commissioner's authorization described in Section*
7 *1201 or the securities are exempt from authorization pursuant to*
8 *Section 1202, or by a regulation or order of the commissioner.*

9 *1002. No bank shall be a close corporation (as defined in*
10 *Section 158 of the Corporations Code).*

11 *1003. Except where explicitly stated or the context provides*
12 *otherwise, this division is applicable to the following:*

13 *(a) All corporations engaging in commercial banking, industrial*
14 *banking, or the trust business.*

15 *(b) All national banking associations authorized to transact*
16 *business in this state to the extent that the provisions of this division*
17 *are not inconsistent with and do not infringe paramount federal*
18 *laws governing national banking associations.*

19 *(c) All other corporations that subject themselves to the special*
20 *provisions and sections of this division.*

21 *(d) All other persons, associations, copartnerships, or*
22 *corporations who, by violating any of its provisions, become*
23 *subject to the penalties provided for in this division.*

24 *1004. (a) A California state bank is a corporation incorporated*
25 *under Division 1 (commencing with Section 100) of Title 1 of the*
26 *Corporations Code that is, with the approval of the commissioner,*
27 *incorporated for the purpose of engaging in, or that is authorized*
28 *by the commissioner to engage in, the commercial or industrial*
29 *banking business.*

30 *(b) All provisions of law applicable to corporations generally,*
31 *including, but not limited to, the General Corporation Law*
32 *(Division 1 (commencing with Section 100), Title 1 of the*
33 *Corporations Code) shall apply to banks. However, whenever any*
34 *provision of this division or any regulation or order issued under*
35 *any provision (other than this section) of this division applicable*
36 *to banks is inconsistent with any provision of law applicable to*
37 *corporations generally, that provision of this division or that*
38 *regulation or order shall apply and the provision of law applicable*
39 *to corporations generally shall not apply.*

1 1005. *It shall be unlawful for any person, corporation, limited*
2 *liability company, partnership, firm, or any other form of business*
3 *entity allowed by law, to engage in or transact commercial banking*
4 *business, industrial banking business, or trust business within this*
5 *state except by means of a corporation duly organized for that*
6 *purpose.*

7 1006. *No corporation shall hereafter be organized under the*
8 *laws of this state to transact the business of a commercial bank,*
9 *industrial bank, or trust company, except as provided in this*
10 *chapter.*

11 1007. *Neither the enactment of this code nor the amendment*
12 *or repeal thereof, nor the repeal of any statute affected thereby,*
13 *shall take away or impair any liability or cause of action existing*
14 *or incurred against any bank or trust company, or the*
15 *shareholders, directors, or officers thereof.*

16 1008. *The amount of funds of a bank or trust company that are*
17 *deposited in any other financial institution (other than a Federal*
18 *Reserve Bank) shall not at any time exceed 10 percent of the sum*
19 *of shareholders' equity, allowance for loan and lease losses,*
20 *capital notes, and debentures of the depositing bank or trust*
21 *company unless the financial institution has been designated as a*
22 *depository for the funds of the depositing bank or trust company*
23 *by a vote of the majority of the directors of the depositing bank or*
24 *trust company, and unless the financial institution has been*
25 *approved by the commissioner as a depository for the purposes of*
26 *this section. The commissioner may, in his or her discretion, revoke*
27 *his or her approval of any such depository and may, in his or her*
28 *discretion, limit the amount of funds that may be deposited by any*
29 *bank or trust company with any other financial institution. A*
30 *deposit by one bank or trust company with another financial*
31 *institution shall not be regarded as a loan.*

32

33 *CHAPTER 2. APPLICATION*

34

35 1020. *The request for authority to organize and establish a*
36 *corporation to engage in the banking or trust business shall be set*
37 *forth in an application in such form and containing such*
38 *information as the commissioner may require and shall be*
39 *accompanied by a fee of five thousand dollars (\$5,000).*

1 1021. Upon receiving a request for an application, the
2 commissioner shall inform the prospective applicant in writing
3 that the commissioner is available to confer with such prospective
4 applicant in advance of the filing of an application for the purpose
5 of discussing questions relating to such application. However, no
6 application shall be decided in advance of filing.

7 1022. Upon the filing of an application the commissioner shall
8 make or cause to be made a careful investigation and examination
9 relative to the following:

10 (a) The character, reputation, and financial standing of the
11 organizers or incorporators and their motives in seeking to
12 organize the proposed bank or trust company.

13 (b) The need for banking or trust facilities or additional banking
14 or trust facilities, as the case may be, giving particular
15 consideration to the adequacy of existing banking or trust facilities
16 and the need for further banking or trust facilities.

17 (c) The character, financial responsibility, banking or trust
18 experience, and business qualifications of the proposed officers
19 of the bank or trust company.

20 (d) The character, financial responsibility, business experience,
21 and standing of the proposed stockholders and directors.

22 (e) Other facts and circumstances bearing on the proposed bank
23 or trust company and its relation to the locality as in the opinion
24 of the commissioner may be relevant.

25 1023. The commissioner may give or withhold his or her
26 approval of the application in his or her discretion, but he or she
27 shall not approve the application until he or she has ascertained
28 to his or her satisfaction:

29 (a) That the public convenience and advantage will be promoted
30 by the establishment of the proposed bank or trust company.

31 (b) That the proposed bank or trust company will have a
32 reasonable promise of successful operation.

33 (c) That the bank is being formed for no other purpose than the
34 legitimate objects contemplated by this division.

35 (d) That the proposed capital structure is adequate.

36 (e) That the proposed officers and directors have sufficient
37 banking or trust experience, ability, and standing to afford
38 reasonable promise of successful operation.

39 (f) That the name of the proposed bank or trust company does
40 not resemble, so closely as to be likely to cause confusion, the

1 *name of any other bank or trust company transacting business in*
2 *this state or which had previously transacted business in this state.*
3 *(g) That the applicant has complied with all of the applicable*
4 *provisions of this division.*

5 *1024. (a) In this section:*

6 *(1) "Control" has the meaning set forth in Section 1250.*

7 *(2) "Officer" has the meaning set forth in Section 33057.*

8 *(b) For purposes of Section 1023, the commissioner may find:*

9 *(1) That a proposed officer or director of a proposed bank or*
10 *trust company does not have sufficient standing to afford*
11 *reasonable promise of successful operation if such person has*
12 *been convicted of, or has pleaded nolo contendere to, any crime*
13 *involving fraud or dishonesty.*

14 *(2) That the establishment of a proposed bank or trust company*
15 *will not promote the public convenience and advantage if any*
16 *person who is proposed to control the proposed bank or trust*
17 *company or any director or officer of such person has been*
18 *convicted of, or has pleaded nolo contendere to, any crime*
19 *involving fraud or dishonesty.*

20 *(c) Subdivision (b) shall not be deemed to be the only grounds*
21 *upon which the commissioner may find, for purposes of Section*
22 *1023, that a proposed officer or director of a proposed bank or*
23 *trust company does not have sufficient standing to afford*
24 *reasonable promise of successful operation or that the*
25 *establishment of a proposed bank or trust company will not*
26 *promote the public convenience and advantage.*

27 *1025. At least 30 days before denying an application, the*
28 *commissioner shall by mail or other method of service give written*
29 *notice of the intended denial of an application and of the right of*
30 *the applicant to meet with the commissioner regarding the reasons*
31 *for such denial. The request for such meeting shall be in writing*
32 *and delivered to the commissioner within 20 calendar days of the*
33 *date of giving of the notice of intended denial. If a request is made*
34 *for such meeting, the application may not be denied until after the*
35 *meeting.*

36 *1026. The commissioner may, in approving an application to*
37 *organize and establish a corporation to engage in the banking or*
38 *trust business pursuant to Section 362, impose any conditions the*
39 *commissioner deems reasonable or necessary or advisable in the*
40 *public interest.*

1 1027. (a) *With the approval of the commissioner, a bank may*
2 *be formed to facilitate a merger or an acquisition of control. The*
3 *new bank may survive the merger or acquisition of control.*

4 (b) *Sections 1020, 1021, 1022, 1023, and 1024 shall not apply*
5 *to the formation of a bank pursuant to subdivision (a).*

6 (c) *Article 4 (commencing with Section 370) shall apply to a*
7 *bank formed pursuant to subdivision (a).*

8 (d) *A request for approval to form a bank in accordance with*
9 *subdivision (a) shall be accompanied by a fee of two thousand five*
10 *hundred dollars (\$2,500).*

11
12 *CHAPTER 3. AUTHORIZATION TO ENGAGE IN BANKING*
13

14 1040. *In this article:*

15 (a) *“Preopening expenditure” means any obligation incurred,*
16 *or sum disbursed, by a bank prior to the time when it commences*
17 *to transact banking business, for the purpose of organizing such*
18 *bank.*

19 (b) *“Preopening noncapital expenditure” means any preopening*
20 *expenditure other than such preopening expenditures as may be*
21 *capitalized.*

22 1041. *The articles of incorporation of the proposed bank or*
23 *trust company shall be submitted to the commissioner for his or*
24 *her approval before they are filed with the Secretary of State*
25 *pursuant to the Corporations Code. After the articles have been*
26 *filed with the Secretary of State the proposed bank or trust*
27 *company shall:*

28 (a) *File with the commissioner a copy of its articles of*
29 *incorporation, certified by the Secretary of State.*

30 (b) *File with the commissioner a statement in the form and with*
31 *any supporting data as the commissioner may require showing*
32 *that the entire contributed capital has been fully paid in lawful*
33 *money, unconditionally, and that the funds representing the*
34 *contributed capital, less sums spent as authorized by this article*
35 *for preopening expenditures are on deposit in a state or national*
36 *bank in this state, subject to withdrawal on demand.*

37 (c) *Pay to the commissioner a fee of two thousand five hundred*
38 *dollars (\$2,500).*

39 1042. *If the commissioner finds that the proposed bank or trust*
40 *company has in good faith complied with all the requirements of*

1 law and fulfilled all the conditions precedent to commencing
2 business imposed by this code or by regulation, the commissioner
3 shall, within 30 days after the statement and supporting data
4 specified in Section 1041 have been filed with him or her, issue in
5 duplicate a certificate of authorization to transact business as a
6 bank or trust company, as the case may be, and shall transmit one
7 copy to the bank or trust company and place one copy on file in
8 the department. The certificate of authorization shall state that
9 the corporation named therein has complied with all the provisions
10 of this code governing organization of banks or trust companies
11 and that it is authorized to transact the business specified therein.

12 1043. It shall be unlawful to accept payment of subscriptions
13 for shares of any corporation proposing to engage in the banking
14 or trust business unless authority to organize such corporation
15 has been granted by the commissioner.

16 1044. No corporation organized to transact a commercial
17 banking or trust business shall transact any business until the
18 commissioner has issued his or her certificate authorizing it to
19 transact such business. No bank or trust company shall incur any
20 indebtedness except that which is incidental to its organization
21 until the amount of its contributed capital has been fully paid in
22 lawful money to the cashier or chief financial officer thereof.

23 1045. If the proposed bank or trust company fails to file
24 evidence of incorporation and organization with the commissioner
25 pursuant to Section 1041 within one year after the approval of the
26 application for authority to organize the bank or trust company,
27 the right to organize the bank or trust company automatically
28 terminates. The commissioner, however, for good cause on written
29 application filed before the expiration of the original period or
30 any additional period, as the case may be, and payment of a fee
31 of one hundred dollars (\$100), may extend for additional periods
32 not in excess of six months each the time within which the bank or
33 trust company may be organized.

34 1046. If the proposed bank or trust company fails to open for
35 business within 90 days after the issuance of the certificate of
36 authorization, the right to transact business automatically
37 terminates. The commissioner, however, for good cause on written
38 application filed before the end of said 90-day period, may extend
39 for one additional period of not to exceed 90 days the time within
40 which the bank or trust company may open for business.

1 1047. *It is unlawful to apply any part of the funds collected*
2 *from subscribers or shareholders to the payment of commissions*
3 *or fees for obtaining subscriptions or selling shares or, except*
4 *with the prior approval of the commissioner, to the payment of*
5 *preopening noncapital expenditures.*

6 1048. *Every bank and trust company shall keep posted in a*
7 *conspicuous place in its banking room at its head office the*
8 *certificate of authority to transact a banking or trust business*
9 *issued by the commissioner.*

10
11 *CHAPTER 4. BANK OFFICES*
12

13 1070. *For purposes of this chapter, the following definitions*
14 *apply:*

15 (a) *“Automated teller machine” means any electronic*
16 *information processing device used by a financial institution and*
17 *its customers for the primary purpose of executing transactions*
18 *solely between the financial institution and its customers, if the*
19 *transactions are not incidental to sales between the customer and*
20 *a business entity other than a financial institution.*

21 (b) *“Branch office” means any office at which core banking*
22 *business is conducted other than an automated teller machine, a*
23 *device used to facilitate check guarantee or check authorization,*
24 *or a remote service facility as defined in subsection (d) of Section*
25 *345.12 of Title 12 of the Code of Federal Regulations.*

26 (c) *“Core banking business” means the business of receiving*
27 *deposits, paying checks, making loans, and other activities that*
28 *the commissioner may specify by order or regulation. “Core*
29 *banking business,” when used to describe the trust business,*
30 *includes receiving fiduciary assets and administering fiduciary*
31 *accounts.*

32 (d) *“Facility,” means an office in this state at which a bank*
33 *engages in noncore banking business but at which it does not*
34 *engage in core banking business.*

35 (e) *“Head office” means the office designated by the bank as*
36 *its headquarters.*

37 (f) *“Noncore banking business” means all activities permissible*
38 *for banks, except core banking business, and except those activities*
39 *prohibited by law or determined by the commissioner by regulation*
40 *or order not to be noncore banking business.*

1 (g) “Office” means the head office, any branch office, and any
2 facility office of a bank.

3 (h) “Redesignate offices” means (1) the relocation by a bank
4 of its head office to the site of a branch or facility office in this
5 state and the concurrent establishment by the bank of an office at
6 the former site of the head office, or (2) the relocation by a bank
7 of a branch office to the site of a facility office and the concurrent
8 establishment by the bank of a branch or facility office at the
9 former site of the branch office.

10 1071. The commissioner shall issue a certificate in duplicate
11 authorizing a bank to establish and maintain an office. A bank
12 shall pay a fee of twenty-five dollars (\$25) for every certificate the
13 commissioner issues pursuant to this section.

14 1072. Every bank shall establish and maintain a head office
15 which shall be located in this state.

16 1073. A bank, with the approval of its board, may establish
17 and maintain one or more offices.

18 1074. A bank, with the approval of its board, may relocate an
19 office.

20 1075. A bank, with the approval of its board, may redesignate
21 offices.

22 1076. Each time a bank establishes an office, relocates an
23 office, or redesignates an office, the bank shall, within 10 days of
24 the establishment, relocation, or redesignation of the offices, file
25 a notice with the commissioner. The notice shall include:

26 (a) The type of office or offices to be established, relocated, or
27 redesignated.

28 (b) The complete address of the office or offices to be
29 established, relocated, or redesignated. If an office is being
30 relocated, the old address of the office and the address at which
31 the office will be relocated.

32 (c) The date the office or offices were established, relocated,
33 or redesignated.

34 (d) The appropriate fee for the certificate or certificates to be
35 issued by the commissioner.

36 1077. On or before January 1 of each year, every bank shall
37 file with the commissioner a list of all offices that are currently
38 maintained and operated by the bank. The report shall designate
39 the type of each office that is being maintained and operated, and
40 the complete address of each office.

1 1078. (a) A bank may close or discontinue the operation of
2 any branch office if, before the closing or discontinuance, (1) the
3 bank files with the commissioner a notice containing the
4 information in subdivision (b), and (2) the commissioner within
5 60 days after the filing of the notice or any longer period to which
6 the bank consents, filing of the notice or any longer period to which
7 the bank consents, either (A) issues a written statement not
8 objecting to the notice, or (B) does not issue a written objection
9 to the notice.

10 (b) (1) A notice filed under subdivision (a) shall contain all of
11 the following information:

12 (A) The name of the California state bank.

13 (B) The location of the branch office proposed to be closed or
14 discontinued.

15 (C) The location of the office to which the business of the branch
16 office proposed to be closed or discontinued is proposed to be
17 transferred.

18 (D) The proposed date of closing or discontinuance.

19 (E) A detailed statement of the reasons for the decision to close
20 the branch office.

21 (F) Statistical or other information in support of the reasons
22 consistent with the institution's written policy for branch office
23 closings.

24 (G) Any other information that the commissioner may require.

25 (2) A notice filed under subdivision (a) shall be in the form,
26 shall be signed in the manner, and shall, if the commissioner
27 requires, be verified in the manner that the commissioner may
28 require.

29 (c) For purposes of subdivision (a), a notice is deemed to be
30 filed with the commissioner at the time when the complete notice,
31 including any amendments or supplements, containing all the
32 information required by the commissioner, and otherwise
33 complying with subdivision (b), is received by the commissioner.

34 (d) In determining whether or not to object to a notice filed
35 under subdivision (a), except if the commissioner finds that it is
36 necessary in the interests of safety and soundness that the branch
37 office be closed or discontinued, the commissioner shall consider
38 whether the closing or discontinuance of the branch office will
39 have a seriously adverse effect on the public convenience or
40 advantage.

1 1079. If the commissioner finds for any reason that the
2 establishment, relocation, or redesignation of office would be
3 unsafe or unsound for a bank, the commissioner may order the
4 bank not to establish, relocate, or redesignate offices without the
5 prior approval of the commissioner. The order may contain any
6 other restrictions and conditions as the commissioner deems
7 necessary.

8 1080. If a bank violates any provision of this chapter or fails
9 to comply with any order, the commissioner may levy a penalty
10 against the bank pursuant to Section 216.3.

11 1081. A bank, with the approval of its board, may discontinue
12 a facility office. Within 10 days of the date of the closure of the
13 facility office, the bank shall file a notice of that discontinuance
14 with the commissioner. The notice shall contain the information
15 required by Section 1076. There shall be no fee associated with
16 the discontinuance of a facility office.

17 1082. Any bank that establishes a branch office in this state in
18 accordance with Section 36(g)(1)(A) of the National Bank Act (12
19 U.S.C. Sec. 36(g)(1)(A)), or Section 18(d)(4)(A)(i) of the Federal
20 Deposit Insurance Act (12 U.S.C. Sec. 1828(d)(4)(A)(i)), as those
21 sections were amended by the Dodd-Frank Wall Street Reform
22 and Consumer Protection Act of 2010, shall, within 10 days of the
23 establishment, relocation, or redesignation of the offices, file a
24 notice with the commissioner that includes all of the following:

25 (a) The name of the bank establishing the branch office or
26 offices.

27 (b) The home state or state of incorporation of the bank
28 establishing the branch office or offices.

29 (c) The complete address of the office or offices established or
30 to be established.

31 (d) The date the branch office or offices were or will be opened.

32 (e) Any other information, if any, that the commissioner deems
33 necessary.

34
35 *CHAPTER 5. CORPORATE REQUIREMENTS*

36
37 *Article 1. Articles, Bylaws, and Names*

38
39 1100. The articles of each bank shall contain the applicable
40 one of the following statements:

1 (a) *In case the bank is, or is proposed to be, a commercial bank*
2 *not authorized to engage in trust business, that the purpose of the*
3 *corporation is to engage in commercial banking business and any*
4 *other lawful activities which are not, by applicable laws or*
5 *regulations, prohibited to a commercial bank.*

6 (b) *In case the bank is, or is proposed to be, a commercial bank*
7 *authorized to engage in trust business, that the purpose of the*
8 *corporation is to engage in commercial banking business and trust*
9 *business and any other lawful activities which are not, by*
10 *applicable laws or regulations, prohibited to a commercial bank*
11 *authorized to engage in trust business.*

12 (c) *In case the bank is, or is proposed to be, an industrial bank*
13 *not authorized to engage in trust business, that the purpose of the*
14 *corporation is to engage in industrial banking business and any*
15 *other lawful activities which are not, by applicable laws or*
16 *regulations, prohibited to an industrial bank.*

17 (d) *In case the bank is, or is proposed to be, an industrial bank*
18 *authorized to engage in trust business, that the purpose of the*
19 *corporation is to engage in industrial banking business and trust*
20 *business and any other lawful activities which are not, by*
21 *applicable laws or regulations, prohibited to an industrial bank*
22 *authorized to engage in trust business.*

23 (e) *In case the bank is, or is proposed to be, a trust company*
24 *(other than a commercial bank authorized to engage in trust*
25 *business), that the purpose of the corporation is to engage in trust*
26 *business and any other lawful activities which are not, by*
27 *applicable laws or regulations, prohibited to a trust company.*

28 1101. (a) *In this section:*

29 (1) *“Assessment provision” means the provision in the articles*
30 *of a bank that complies with the requirements of Section 600.2, as*
31 *in effect immediately before the effective date of this section, or*
32 *any predecessor statute.*

33 (2) *“Bank” means any (A) California state bank or (B)*
34 *corporation organized under the laws of this state for the purpose*
35 *of transacting business pursuant to Article 1 (commencing with*
36 *Section 1850) of Chapter 21.*

37 (b) *On and after the effective date of this section, the assessment*
38 *provision in the articles of a bank shall no longer be of any force*
39 *or effect.*

1 (c) Notwithstanding Sections 902 and 903 of the Corporations
2 Code, a bank may, on or after the effective date of this section,
3 amend its articles by deleting the assessment provision with the
4 approval of its board alone and without any approval of its
5 outstanding shares.

6 (d) (1) Any order issued before the effective date of this section
7 by the commissioner pursuant to Section 662, as in effect
8 immediately before the effective date of this section or any
9 predecessor statute, shall, if and to the extent that the bank has
10 not before that date levied and collected through sale of shares or
11 otherwise, an assessment on its common shares, be deemed
12 rescinded.

13 (2) Any proceeding commenced before the effective date of this
14 section by a bank to assess its common shares in accordance with
15 an order issued by the commissioner pursuant to Section 662, as
16 in effect immediately before the effective date of this section or
17 any predecessor statute, shall be terminated on the effective date
18 of this section. On and after the effective date of this section, the
19 bank shall take no further action to levy or collect the assessment
20 on its common shares, and any lien on the common shares created
21 by the assessment shall be deemed extinguished.

22 1102. (a) No amendment of the articles of a bank (other than
23 an amendment set forth in an agreement of merger or in a
24 certificate of ownership executed pursuant to Section 1110 of the
25 Corporations Code that requires the approval of the commissioner
26 pursuant to Chapter 4 (commencing with Section 4880) of Division
27 1.6) shall become effective unless the certificate of amendment or
28 other instrument setting forth the amendment is filed with the
29 Secretary of State with the commissioner's approval endorsed
30 thereon. Promptly after the amendment becomes effective, the bank
31 shall file with the commissioner a copy of the certificate of
32 amendment or other instrument certified by the Secretary of State.

33 (b) Any amendment of the articles of a bank set forth in an
34 agreement of merger or in a certificate of ownership executed
35 pursuant to Section 1110 of the Corporations Code that requires
36 the approval of the commissioner pursuant to Chapter 4
37 (commencing with Section 4880) of Division 1.6, shall become
38 effective at the time when the merger becomes effective pursuant
39 to this division.

1 1103. No restated articles of a bank shall become effective
2 unless the certificate setting forth such restated articles is filed
3 with the Secretary of State with the commissioner's approval
4 endorsed thereon. Promptly after the restated articles become
5 effective, such bank shall file with the commissioner a copy of such
6 certificate certified by the Secretary of State.

7 1104. No certificate of determination of a bank shall become
8 effective unless such certificate of determination is filed with the
9 Secretary of State with the commissioner's approval endorsed
10 thereon. Promptly after the certificate of determination becomes
11 effective, such bank shall file with the commissioner a copy of the
12 certificate of determination certified by the Secretary of State.

13 1105. No certificate of correction of a bank shall become
14 effective unless such certificate of correction is filed with the
15 Secretary of State with the commissioner's approval endorsed
16 thereon. Promptly after the certificate of correction becomes
17 effective, such bank shall file with the commissioner a copy of the
18 certificate of correction certified by the Secretary of State.

19 1106. No certificate of revocation of a bank shall become
20 effective unless such certificate of revocation is filed with the
21 Secretary of State with the commissioner's approval endorsed
22 thereon. Promptly after the certificate of revocation becomes
23 effective, such bank shall file with the commissioner a copy of the
24 certificate of revocation certified by the Secretary of State.

25 1107. (a) A bank may change its name if it files with the
26 commissioner a report on the proposed change not less than 30
27 days before the change. The report shall be in the form, shall
28 contain the information, shall be signed in the manner, and shall,
29 if the commissioner so requires, be verified in the manner the
30 commissioner may require.

31 (b) Whenever a bank changes its name, the bank shall surrender
32 to the commissioner for cancellation the certificates of authority
33 under its old name for its head office, any branch offices, and any
34 places of business. The commissioner shall issue to the bank
35 replacement certificates under the bank's new name and the bank
36 shall pay to the commissioner a fee of twenty-five dollars (\$25)
37 for each replacement certificate.

38 (c) The commissioner may not deny an application for approval
39 of an amendment of the articles of incorporation of a bank which
40 changes the name of the bank or any other application of a bank

1 *relating to a change in the name of the bank because the new name*
2 *of the bank resembles so closely, as to be likely to cause confusion,*
3 *the name of any other bank.*

4

5

Article 2. Shares

6

7 *1120. A bank may, with the approval of its board, determine*
8 *and from time to time redetermine the par value of any class or*
9 *series of its shares unless its articles provide that such shares shall*
10 *have par value and specify the par value of such shares.*

11 *1121. No bank or trust company after October 1, 1949, shall*
12 *issue any shares before they are fully paid for.*

13 *1122. No bank shall issue any shares in consideration of:*

14 *(a) Services rendered in the organization of such bank; or*

15 *(b) Any note (whether or not negotiable and whether or not*
16 *secured) made by the purchaser of such shares.*

17

18

Article 3. Distributions to Shareholders

19

20 *1130. This article does not apply to any distribution made to*
21 *the shareholders of a bank in any proceeding to wind up and*
22 *dissolve or to liquidate such bank.*

23 *1131. Section 500 of the Corporations Code does not apply to*
24 *the making by a bank or by any majority-owned subsidiary of a*
25 *bank of any distribution to the shareholders of such bank.*

26 *1132. Neither a bank nor any majority-owned subsidiary of a*
27 *bank shall make any distribution to the shareholders of such bank*
28 *in an amount which exceeds the lesser of:*

29 *(a) The retained earnings of the bank; or*

30 *(b) The net income of the bank for its last three fiscal years, less*
31 *the amount of any distributions made by the bank or by any*
32 *majority-owned subsidiary of the bank to the shareholders of the*
33 *bank during such period.*

34 *1133. Notwithstanding the provisions of Section 1132, a bank*
35 *or a majority-owned subsidiary of a bank may, with the prior*
36 *approval of the commissioner, make a distribution to the*
37 *shareholders of such bank in an amount not exceeding the greatest*
38 *of:*

39 *(a) The retained earnings of the bank;*

40 *(b) The net income of the bank for its last fiscal year; or*

1 (c) *The net income of the bank for its current fiscal year.*

2 1134. *Notwithstanding the provisions of Section 642, a bank*
3 *may:*

4 (a) *With the prior approval of the commissioner, make a*
5 *distribution to its shareholders by means of redeeming its*
6 *redeemable shares; and*

7 (b) *With the prior approval of its outstanding shares and of the*
8 *commissioner, otherwise make a distribution to its shareholders*
9 *in connection with a reduction of its contributed capital.*

10 1135. *If the commissioner finds that the shareholders' equity*
11 *of a bank is not adequate or that the making by a bank or by any*
12 *majority-owned subsidiary of a bank of a distribution to the*
13 *shareholders of the bank would be unsafe or unsound for the bank,*
14 *the commissioner may order the bank and its majority-owned*
15 *subsidiaries not to make any distribution to the shareholders of*
16 *the bank. In addition to the order authorized by this section, the*
17 *commissioner may levy a civil penalty against the bank pursuant*
18 *to Section 329.*

19
20 *Article 4. Shareholders' Equity*
21

22 1150. *In determining for purposes of this division whether the*
23 *shareholders' equity of a bank or of a proposed bank is adequate,*
24 *the commissioner shall consider:*

25 (a) *The nature and volume of the business of the bank;*

26 (b) *The amount, nature, quality, and liquidity of the assets of*
27 *the bank;*

28 (c) *The amount and nature of the liabilities (including, but not*
29 *limited to, any capital notes or debentures and any contingent*
30 *liabilities) of the bank;*

31 (d) *The amount and nature of the fixed charges of the bank;*

32 (e) *The history of, and prospects for, the bank to earn and retain*
33 *income;*

34 (f) *The quality of the operations of the bank;*

35 (g) *The quality of the management of the bank;*

36 (h) *The nature and quality of the ownership of the bank; and*

37 (i) *Such other factors as are in the opinion of the commissioner*
38 *relevant.*

39 1151. *For purposes of any statute, regulation, or requirement*
40 *of any governmental official or agency which refers to the capital*

1 (including, without limitation, stated capital, paid-in capital, and
2 paid-up capital, but excluding contributed capital), surplus, or
3 undivided profits of a bank, a bank, with the approval of its board,
4 may establish and maintain capital, surplus, and undivided profits
5 accounts and may from time to time allocate and reallocate its
6 shareholders' equity among such accounts; provided, however:

7 (a) That no part of the contributed capital of the bank shall be
8 allocated to the undivided profits account of the bank;

9 (b) That the undivided profits account of the bank shall at no
10 time exceed the retained earnings of the bank; and

11 (c) That, in case the articles of the bank provide that any of the
12 bank's shares shall have par value and specify the par value of
13 such shares or in case the bank has determined the par value of
14 any of its shares pursuant to Section 620, the capital account of
15 the bank shall be not less than the aggregate par value of such
16 shares which are outstanding.

17 1152. A bank which has deficit retained earnings may, with
18 the prior approval of its outstanding shares and of the
19 commissioner, readjust its accounts in a quasi-reorganization.
20 Such readjustment may include, without limitation, eliminating
21 such deficit retained earnings.

22

23 Article 5. Directors

24

25 1170. Any reference in this article to the time a notice is given
26 or sent shall be construed in accordance with Section 118 of the
27 Corporations Code.

28 1171. The board of a bank or trust company hereafter
29 organized shall consist of not less than five nor more than 25
30 directors, and no bank or trust company shall amend its articles
31 or bylaws so as to reduce the number of directors below five.

32 1172. The board of each bank and of each trust company shall
33 hold a meeting not less than once each calendar quarter. Regular
34 meetings of the board shall be held within this state. Any regular
35 or special meeting is valid wherever held if held upon written
36 consent of all members of the board given either before or after
37 the meeting and filed with the secretary of the corporation. Special
38 meetings of the board may be held upon four days' notice by mail,
39 unless the articles or bylaws provide otherwise, or 24 hours' notice

1 *delivered personally or by telephone or by telegraph, unless the*
2 *articles or bylaws provide for a shorter period.*

3 *1173. The commissioner may, in the name of the people of this*
4 *state, bring or intervene in an action under Section 709 of the*
5 *Corporations Code to determine the validity of any election or*
6 *appointment of any director of a bank to the same extent as a*
7 *shareholder of such bank might bring such an action.*

8 *1174. (a) The commissioner shall be deemed to be a party in*
9 *interest within the meaning of Section 306 of the Corporations*
10 *Code with respect to a bank and may, in the name of the people*
11 *of this state, bring or intervene in an action under Section 306 of*
12 *the Corporations Code for the appointment of directors of a bank.*

13 *(b) The commissioner may, in the name of the people of this*
14 *state, bring or intervene in an action under Section 308 of the*
15 *Corporations Code for the appointment of a provisional director*
16 *or directors of a bank to the same extent as a shareholder who*
17 *held 50 percent of the voting power of such bank might bring such*
18 *an action.*

19 *1175. (a) For purposes of Section 316 of the Corporations*
20 *Code, to the extent that the making by a bank or by any*
21 *majority-owned subsidiary of a bank of a distribution to any*
22 *shareholder of the bank is contrary to any provision of Article 3*
23 *(commencing with Section 1130), the making of the distribution*
24 *shall, to that extent, be deemed to be contrary to the provisions of*
25 *Section 500 of the Corporations Code.*

26 *(b) The commissioner may, in the name of the people of this*
27 *state, bring or intervene in an action under Section 316 of the*
28 *Corporations Code for the benefit of a bank against any or all of*
29 *the directors of the bank or of any majority-owned subsidiary of*
30 *the bank on account of the making of a distribution to any*
31 *shareholder of the bank contrary to any provision of Article 3*
32 *(commencing with Section 1130) or any provision of Sections 501,*
33 *502, and 503 of the Corporations Code, to the same extent as a*
34 *creditor of the bank who did not consent to the illegal distribution*
35 *and who had a valid claim against the bank that arose prior to the*
36 *time of the illegal distribution and exceeded the amount of the*
37 *illegal distribution, may bring the action in the name of the bank.*

38 *(c) As an alternative to the action provided for in subdivision*
39 *(b), the commissioner may levy a civil penalty against the bank*
40 *pursuant to Section 329.*

1 1176. (a) For purposes of Section 316 of the Corporations
2 Code, the making of a loan or guarantee by a bank or any other
3 extending of credit by a bank contrary to any provision of this
4 division shall be deemed to be contrary to Section 315 of the
5 Corporations Code.

6 (b) The commissioner may, in the name of the people of this
7 state, bring or intervene in an action under Section 316 of the
8 Corporations Code for the benefit of a bank against any or all of
9 the directors of the bank on account of the making of a loan or
10 guarantee or any other extending of credit contrary to any
11 provision of this division, to the same extent as a creditor of the
12 bank who did not consent to the illegal making of the loan or
13 guarantee or the other illegal extending of credit and who had a
14 valid claim against the bank which arose prior to the time of the
15 illegal making of the loan or guarantee or the other illegal
16 extending of credit and which exceeded the amount of loss suffered
17 by the bank as a result of the illegal making of the loan or
18 guarantee or the other illegal extending of credit, might bring the
19 action in the name of the bank.

20 (c) As an alternative to the action provided for in subdivision
21 (b), the commissioner may levy a civil penalty against the bank
22 pursuant to Section 329.

23

24

Article 6. Shareholders

25

26 1190. (a) Paragraph (1) of subdivision (b) of Section 1501 of
27 the Corporations Code does not apply to the annual report of any
28 bank with respect to any transaction consisting of an extension of
29 credit by such bank or by any of its majority-owned subsidiaries.

30 (b) The annual report of a bank which would, but for the
31 provisions of subdivision (a), be subject to paragraph (1) of
32 subdivision (b) of Section 1501 of the Corporations Code, shall
33 disclose such information regarding debts owing to such bank or
34 to any of its majority-owned subsidiaries and transactions
35 consisting of extensions of credit by the bank or by any of its
36 majority-owned subsidiaries, as the commissioner may by
37 regulation require. In issuing any such regulation, the
38 commissioner shall give due consideration to regulations regarding
39 such matters issued by federal bank regulatory agencies under the
40 Securities Exchange Act of 1934.

CHAPTER 6. SECURITIES

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1200. Unless the context otherwise requires, in this chapter:
(a) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security for value.
(b) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security for value. "Sale" or "sell" includes any exchange of securities and any change in the rights, preferences, privileges, or restrictions of or on outstanding securities.
(c) "Security" means any stock, capital note, or debenture, or any warrant, right, or option to subscribe to or purchase any of the foregoing.
(d) The terms defined in subdivisions (a) and (b) do not include any stock dividend payable with respect to common stock of a bank solely (except for any cash or scrip paid for fractional shares) in shares of such common stock, if such bank has no other class of voting stock outstanding, provided that shares issued in any such dividend shall be subject to any conditions previously imposed by the commissioner applicable to the shares with respect to which they are issued.
1201. No bank organized under the laws of this state shall offer or sell any security issued by it unless the commissioner has issued a permit authorizing such sale.
1202. The following transactions are exempt from Section 1201:
(a) (1) Any offer (but not a sale) not involving a public offering by a bank organized under the laws of this state of its securities and the execution and delivery of any agreement for the sale of the securities pursuant to the offer if no part of the consideration for the securities is paid to or received by the bank and none of the securities are issued until the sale of the securities is authorized by the commissioner or exempted from authorization.
(2) For purposes of paragraph (1), an offer does not involve any public offering if the offers are not made to more than 25 persons and any agreement for the sale of the securities is not entered into with more than 10 of those 25 persons, and if all of the offerees either have a preexisting personal or business relationship with the bank or its officers, directors, or controlling persons, or by reason of their business or financial experience the

1 *offerees could be reasonably assumed to have the capacity to*
2 *protect their own interests in connection with the transaction.*

3 *(b) Any stock split by a bank organized under the laws of this*
4 *state that is effected pursuant to an amendment to its articles, an*
5 *agreement of merger, or a certificate of ownership that has been*
6 *approved by the commissioner, unless this exemption is withheld*
7 *by order of the commissioner.*

8 *(c) Any offer or sale of securities by a bank organized under*
9 *the laws of this state that is either (1) to a person actually approved*
10 *by the commissioner pursuant to Section 1253 to acquire control*
11 *of the bank if all of the material terms and conditions of the offer*
12 *and sale of securities are disclosed in the application for approval*
13 *specified in Section 1253 and the offer and sale of securities is in*
14 *accordance with the terms and subject to the conditions of the*
15 *approval to acquire control or (2) in a transaction exempted from*
16 *the approval requirement of Section 1251 by a regulation or an*
17 *order of the commissioner, unless this exemption is withheld by*
18 *order of the commissioner.*

19 *1203. An application for a permit shall be in such form and*
20 *contain such information as the commissioner may prescribe.*

21 *1204. The commissioner shall charge and collect fees for*
22 *applications filed under this chapter as fixed in this section.*

23 *(a) The fee for a negotiating permit shall be fifty dollars (\$50).*

24 *(b) The fee for a permit to exchange a security or to make any*
25 *change in the rights, preferences, privileges, or restrictions of or*
26 *on outstanding securities shall be fifty dollars (\$50).*

27 *(c) The fee for any permit to sell securities other than as*
28 *specified in subdivision (b) shall be one hundred dollars (\$100)*
29 *plus one-tenth of one percent (0.1%) of the aggregate value of the*
30 *securities sought to be sold, up to a maximum aggregate fee of*
31 *one thousand seven hundred fifty dollars (\$1,750).*

32 *1205. If the commissioner finds that the proposed sale of*
33 *securities is fair, just, and equitable, he or she shall issue to the*
34 *applicant a permit authorizing it to offer and sell the securities in*
35 *such amount and upon such terms and conditions as he or she may*
36 *provide in the permit. If the commissioner finds otherwise, he or*
37 *she shall deny the application.*

38 *1206. The commissioner may impose conditions in any permit*
39 *issued under Section 1205, requiring the deposit in escrow of*
40 *securities, imposing a legend condition restricting the*

1 *transferability thereof, impounding the proceeds from the sale*
2 *thereof, limiting the expense in connection with the sale thereof,*
3 *or such other conditions as he or she deems reasonable and*
4 *necessary or advisable in the public interest.*

5 *1207. Every permit issued pursuant to Section 1205 shall recite*
6 *that it is permissive only and does not constitute a recommendation*
7 *or endorsement of the securities permitted to be sold.*

8 *1208. The commissioner may amend, alter, suspend, or revoke*
9 *any permit issued pursuant to Section 1205.*

10 *1209. Whenever a bank applies for a permit to issue any*
11 *security or to deliver any other consideration (whether or not such*
12 *security or such transaction is exempt from, or not subject to, the*
13 *provisions of Section 1202) in exchange for one or more bona fide*
14 *outstanding securities (as defined in Section 25019 of the*
15 *Corporations Code), claims, or property interests, or partly in*
16 *such exchange and partly for cash, the commissioner is authorized*
17 *to approve the terms and conditions of such issuance and exchange*
18 *or such delivery and exchange and the fairness of such terms and*
19 *conditions and is authorized to hold a hearing on the fairness of*
20 *such terms and conditions, at which all persons to whom it is*
21 *proposed to issue any security or to deliver any other consideration*
22 *in such exchange shall have the right to appear.*

23 *1210. There shall be exempted from the provisions of Section*
24 *1201 any transaction or security, including, without limitation,*
25 *any type or class of transactions or securities, which the*
26 *commissioner by regulation or order exempts as not being*
27 *comprehended within the purposes of this chapter and the*
28 *regulation of which he or she finds is not necessary or appropriate*
29 *in the public interest or for the protection of investors.*

30 *1211. A bank at any time may, with the approval of its board,*
31 *issue, sell or hypothecate its capital notes or debentures which*
32 *may be payable upon such terms and may bear such rate of*
33 *interest, if any, as may be provided therein or which may be*
34 *convertible into shares. Such capital notes and debentures shall*
35 *be subordinate to the claims of creditors and depositors and it*
36 *shall be provided in any such capital notes or debentures that in*
37 *the event of liquidation all depositors and other creditors of the*
38 *bank shall be entitled to be paid in full with such interest as may*
39 *be provided by law before any payment shall be made on account*
40 *of principal of or interest on such capital notes or debentures and*

1 *it may be provided in any such capital notes or debentures that*
2 *after payment in full of all sums owing to such depositors and*
3 *creditors the holders of such capital notes or debentures shall be*
4 *entitled to be paid from the remaining assets of the bank the unpaid*
5 *principal amount of the capital notes or debentures plus accrued*
6 *and unpaid interest thereon before any payment or other*
7 *distribution, whether in cash, property or otherwise, shall be made*
8 *on account of any shares of the bank. It shall be provided in such*
9 *capital notes or debentures that no payment shall at any time be*
10 *made on account of the principal thereof, unless following such*
11 *payment the aggregate of the shareholders' equity and capital*
12 *notes or debentures thereafter outstanding shall be the equal of*
13 *such aggregate at the date of the original issue of such capital*
14 *notes or debentures, or as may be otherwise authorized by the*
15 *commissioner.*

16 *1212. Nothing contained in this chapter shall affect the*
17 *Corporate Securities Law of 1968, Division 1 (commencing with*
18 *Section 25000) of Title 4 of the Corporations Code.*

19

20

CHAPTER 7. ACQUISITION OF CONTROL

21

22 *1250. Unless the context otherwise requires, in this chapter:*

23 *(a) "Bank" means a bank organized under the laws of this state.*

24 *(b) "Control" means possession, direct or indirect, of the power:*

25 *(1) To vote 25 percent or more of any class of the voting*
26 *securities issued by a person; or*

27 *(2) To direct or cause the direction of the management and*
28 *policies of a person, whether through the ownership of voting*
29 *securities, by contract (other than a commercial contract for goods*
30 *or nonmanagement services), or otherwise; provided, however,*
31 *that no individual shall be deemed to control a person solely on*
32 *account of being a director, officer, or employee of such person.*

33 *For purposes of paragraph (2) of this subdivision, a person who,*
34 *directly or indirectly, owns, controls, holds with the power to vote,*
35 *or holds proxies representing, 10 percent or more of the then*
36 *outstanding voting securities issued by another person is presumed*
37 *to control such other person.*

38 *For purposes of this chapter, the commissioner may determine*
39 *whether a person in fact controls another person.*

1 (c) “Controlling person” means a person who, directly or
2 indirectly, controls a bank.

3 (d) “Person” means an individual, a corporation, an
4 association, a syndicate, a partnership, a limited liability company,
5 a business trust, an estate, a trust, or an organization of any kind,
6 or any combination of any of the foregoing acting in concert.

7 (e) “Shareholder” means:

8 (1) In the case of a corporation, a holder of a share of any class
9 or series.

10 (2) In the case of a nonprofit or charitable corporation, an
11 unincorporated association, or a syndicate, a member.

12 (3) In the case of a partnership, a partner.

13 (4) In the case of a business trust, an estate, or a trust, a holder
14 of a beneficial interest.

15 (5) In the case of an organization of any other kind, a holder
16 of an ownership interest.

17 1251. No person shall, directly or indirectly, unless the
18 commissioner has approved such acquisition of control, do any of
19 the following:

20 (a) Make a tender offer for, a request or invitation for tenders
21 of, or an offer to exchange securities for, any voting security or
22 any security convertible into a voting security of a bank or a
23 controlling person if the person making such tender offer, request
24 or invitation for tenders, or offer to exchange securities would, by
25 consummation thereof, directly or indirectly, acquire control of
26 such bank or such controlling person.

27 (b) Solicit approval of any shareholder of a controlling person
28 for a merger, consolidation, sale of assets, or other transaction
29 by which any person other than such controlling person would
30 acquire control of the bank controlled by such controlling person.

31 (c) Acquire control of a bank or a controlling person; provided,
32 however, that nothing in this subdivision shall be deemed to
33 prohibit any person from negotiating to acquire (but not acquiring)
34 control of a bank or a controlling person.

35 1252. Notwithstanding any other provision of this chapter,
36 except for those persons approved by the commissioner prior to
37 September 1, 2002, and for those persons who control industrial
38 banks as of September 1, 2002, no person may directly or
39 indirectly, including through any merger, consolidation, or any
40 other type of business combination, acquire control of an industrial

1 bank, as defined in Section 111, unless the person is engaged only
2 in the activities permitted for financial holding companies, as
3 provided in Section 103 of the federal Gramm-Leach-Bliley Act
4 (12 U.S.C. Sec. 1843(k)(1)), or is a credit union, as defined in
5 Section 165, when the industrial bank is a credit union service
6 organization, as defined in Section 14651. Nothing in this section
7 shall be construed to exempt a person seeking to acquire control
8 of a bank that otherwise qualifies to do so pursuant to this section,
9 from the requirements of Sections 1250 to 1263, inclusive. For the
10 purposes of this section, the term “control” has the same meaning
11 as in subdivision (b) of Section 1250.

12 1253. An application for approval to acquire control of a bank
13 or a controlling person shall be in such form and contain such
14 information as the commissioner may require by regulation or
15 order and shall be accompanied by the following fee:

16 (a) In case the applicant has been a director or officer of the
17 bank for not less than two years (or, if the bank has been in
18 business for less than two years, for such lesser period), a fee of
19 five hundred dollars (\$500); and

20 (b) In any other case, a fee of one thousand five hundred dollars
21 (\$1,500).

22 1254. If the commissioner finds, with respect to the proposed
23 acquisition of control of a bank or a controlling person, that any
24 of the factors set forth in subdivisions (a) to (g), inclusive, is true,
25 he or she shall deny the application. If the commissioner finds that
26 none of such factors is true, he or she shall approve the application.

27 (a) That the proposed acquisition of control would result in a
28 monopoly or would be in furtherance of any combination or
29 conspiracy to monopolize or to attempt to monopolize the business
30 of banking in any part of this state;

31 (b) That the effect of the proposed acquisition of control in any
32 section of the state may be substantially to lessen competition or
33 to tend to create a monopoly or that the proposed acquisition of
34 control would in any other manner be in restraint of trade, and
35 that the anticompetitive effects of the proposed acquisition of
36 control are not clearly outweighed in the public interest by the
37 probable effect of the transaction in meeting the convenience and
38 needs of the community to be served;

39 (c) That the financial condition of any acquiring person is such
40 as might jeopardize the financial stability of the bank or the

1 *controlling person, or prejudice the interests of the depositors,*
2 *creditors, or shareholders of the bank or the controlling person;*

3 *(d) That plans or proposals to liquidate the bank or the*
4 *controlling person, to sell the assets of the bank or the controlling*
5 *person, to merge or consolidate the bank or the controlling person,*
6 *or to make any other major change in the business, corporation*
7 *structure or management of the bank or the controlling person are*
8 *not fair and reasonable to the depositors, creditors, and*
9 *shareholders of the bank or the controlling person;*

10 *(e) That the competence, experience, or integrity of any*
11 *acquiring person indicates that it would not be in the interest of*
12 *the depositors, creditors, or shareholders of the bank or the*
13 *controlling person or in the interest of the public to permit such*
14 *person to control the bank or the controlling person;*

15 *(f) That the proposed acquisition is unfair, unjust, or inequitable*
16 *to the bank or the controlling person or to the depositors, creditors,*
17 *or shareholders of the bank or the controlling person; or*

18 *(g) That the applicant neglects, fails, or refuses to furnish to*
19 *the commissioner all the information required by the commissioner.*

20 *1255. (a) In this section, “officer” has the meaning set forth*
21 *in Section 33057.*

22 *(b) For purposes of Section 1254, the commissioner may find:*

23 *(1) That the integrity of an acquiring person indicates that it*
24 *would not be in the interest of the depositors, creditors, or*
25 *shareholders of a bank or controlling person or in the interest of*
26 *the public to permit the acquiring person to control the bank or*
27 *controlling person if the acquiring person or any director or officer*
28 *of the acquiring person has been convicted of, or has pleaded nolo*
29 *contendere to, any crime involving fraud or dishonesty.*

30 *(2) That a plan to make a major change in the management of*
31 *a bank or controlling person is not fair and reasonable to the*
32 *depositors, creditors, or shareholders of the bank or controlling*
33 *person if the plan provides for a person who has been convicted*
34 *of, or has pleaded nolo contendere to, any crime involving fraud*
35 *or dishonesty to become a director or officer of the bank or*
36 *controlling person.*

37 *(c) Subdivision (b) shall not be deemed to be the only grounds*
38 *upon which the commissioner may find, for purposes of Section*
39 *1254, that the integrity of an acquiring person indicates that it*
40 *would not be in the interest of the depositors, creditors, or*

1 *shareholders of a bank or controlling person or in the interest of*
2 *the public to permit the acquiring person to control the bank or*
3 *controlling person or that a plan to make a major change in the*
4 *management of a bank or controlling person is not fair and*
5 *reasonable to the depositors, creditors, or shareholders of the*
6 *bank or controlling person.*

7 *1256. The commissioner may, in approving a proposal to*
8 *acquire control of a bank or a controlling person pursuant to*
9 *Section 1254, impose such conditions as the commissioner deems*
10 *reasonable or necessary or advisable in the public interest.*

11 *1257. The commissioner may, for good cause, amend, alter,*
12 *suspend, or revoke any approval of a proposal to acquire control*
13 *of a bank or a controlling person issued pursuant to Section 1254.*

14 *1258. Notwithstanding any other provision of this chapter, any*
15 *application for approval to acquire control of a bank or a*
16 *controlling person which is not denied or approved by the*
17 *commissioner within a period of 60 days after such application is*
18 *filed with the commissioner or, if the applicant consents to an*
19 *extension of the period within which the commissioner may act,*
20 *within such extended period, shall be deemed to be approved by*
21 *the commissioner as of the first day after such period of 60 days*
22 *or such extended period, as the case may be.*

23 *For purposes of this section, an application for approval to*
24 *acquire control of a bank or a controlling person is deemed to be*
25 *filed with the commissioner at the time when the complete*
26 *application, including any amendments or supplements, containing*
27 *all the information in the form required by the commissioner, is*
28 *received by him or her.*

29 *1259. (a) The commissioner, before determining whether, for*
30 *purposes of this chapter, a person controls another person or*
31 *before denying or approving an application for approval to acquire*
32 *control of a bank or controlling person, may hold a hearing.*

33 *(b) After determining whether, for purposes of this chapter, a*
34 *person controls another person or after denying or approving an*
35 *application for approval to acquire control of a bank or controlling*
36 *person, the commissioner, upon the filing of a written request for*
37 *a hearing by any person prejudiced by the commissioner's decision,*
38 *shall hold a hearing and upon such hearing shall affirm, modify,*
39 *or reverse his or her decision. Any such hearing shall commence*
40 *within a period of 30 days after the written request for the hearing*

1 *is filed with the commissioner or, if the person filing the written*
2 *request for the hearing consents to an extension of the period*
3 *within which the hearing is to commence, within such extended*
4 *period.*

5 *1260. There shall be exempted from the provisions of Section*
6 *1251 any transaction, including, without limitation, any type or*
7 *class of transactions, which the commissioner by regulation or*
8 *order exempts as not being comprehended within the purposes of*
9 *this chapter and the regulation of which the commissioner finds*
10 *is not necessary or appropriate in the public interest or for the*
11 *protection of a bank, a controlling person, or the depositors,*
12 *creditors, or shareholders of a bank or a controlling person.*

13 *1261. Whenever it appears to the commissioner that any person*
14 *has committed or is about to commit a violation of any provision*
15 *of this chapter or of any regulation or order of the commissioner*
16 *issued pursuant to this chapter, the commissioner may apply to*
17 *the superior court for an order enjoining such person from*
18 *violating or continuing to violate this chapter or any such*
19 *regulation or order and for other equitable relief as the nature of*
20 *the case or the interests of the bank, the controlling person, the*
21 *depositors, creditors, or shareholders of such bank or such*
22 *controlling person, or the public may require.*

23 *1262. No person shall be entitled to vote or to give a written*
24 *consent with respect to any security acquired in contravention of*
25 *any provision of this chapter or of any regulation or order of the*
26 *commissioner issued pursuant to this chapter for a period of three*
27 *years after such acquisition. If a security of a bank or a controlling*
28 *person is acquired in contravention of this chapter or any such*
29 *regulation or order, such bank, such controlling person, any*
30 *shareholder of such bank or such controlling person, or the*
31 *commissioner may apply to the superior court for equitable relief,*
32 *including costs and (except with respect to the commissioner)*
33 *attorney fees, to enjoin prospectively any person from voting or*
34 *giving any written consent with respect to such security for a period*
35 *of three years after such acquisition, and the commissioner may*
36 *apply to the superior court for equitable relief, including costs, to*
37 *void any voting or any giving of a written consent with respect to*
38 *such security which has occurred since such acquisition.*

39 *1263. If any provision or clause of this chapter or the*
40 *application thereof to any person or circumstance is held invalid,*

1 *illegal, or unenforceable, such invalidity, illegality, or*
 2 *unenforceability shall not affect other provisions or applications*
 3 *of this article which can be given effect without the invalid, illegal,*
 4 *or unenforceable provision or application, and to this end, the*
 5 *provisions of this chapter are declared to be severable.*

6
 7 *CHAPTER 8. BANK HOLDING COMPANIES*

8
 9 *1280. “Bank holding company” means:*

10 *(a) Any person or company which:*

11 *(1) Directly or indirectly owns, controls, or holds with power*
 12 *to vote, 10 percent or more of the outstanding stock of any domestic*
 13 *bank, or 10 percent or more of the outstanding stock of any*
 14 *domestic bank together with 10 percent or more of the shares or*
 15 *proxy of shares of any national bank located in California.*

16 *(2) Controls in any manner whether by the holding of proxy, or*
 17 *otherwise, the election of a majority of the directors of any*
 18 *domestic bank, or of both any domestic bank and any national*
 19 *bank located in California.*

20 *(3) The commissioner determines, after reasonable notice and*
 21 *opportunity for hearing, directly or indirectly exercises, or has*
 22 *power to exercise, a controlling influence over the management*
 23 *and policies of any domestic bank, or of both any domestic bank*
 24 *and any national bank located in California.*

25 *(b) Any company which controls in any manner any company*
 26 *which is or becomes a bank holding company by virtue of this*
 27 *chapter.*

28 *(c) Bank holding company does not include a trust company*
 29 *controlled by or under common control with a title insurance*
 30 *company.*

31 *1281. “Company” means any domestic or foreign corporation,*
 32 *voting trust, business trust, limited partnership, partnership fund,*
 33 *joint stock company, association, syndicate, organized group of*
 34 *persons, or similar organization or group, whether incorporated*
 35 *or not.*

36 *1282. “Subsidiaries”, with respect to a specified bank holding*
 37 *company, means:*

38 *(1) Any company 10 percent or more of whose voting securities*
 39 *are directly or indirectly owned or controlled by such bank holding*
 40 *company;*

1 (2) Any company a majority of whose directors are controlled
2 in any manner by such holding company;

3 (3) Any company 10 percent or more of whose voting securities
4 are held by trustees or nontrustees for the benefit of the
5 stockholders, shareholders, or members of such holding company;
6 or

7 (4) Any company 10 percent or more of the legal or beneficial
8 ownership of which is directly or indirectly owned or controlled
9 by such holding company.

10 1283. The commissioner may from time to time require, under
11 oath or otherwise, reports from any bank holding company and
12 its subsidiaries in such form and as to such matters as the
13 commissioner may deem necessary and appropriate, and which
14 are relevant to the jurisdiction and responsibilities of the
15 commissioner under this division.

16 1284. Each bank holding company and its subsidiaries shall
17 be subject to examination by the commissioner. The commissioner
18 may use, for this purpose, his or her own examiners or independent
19 public accountants who are disinterested persons. In lieu of making
20 an examination, the commissioner may accept the examination of
21 any holding company made by any federal agency, any other
22 agency of this state, or any agency of any other state of the United
23 States and may examine any such holding company in conjunction
24 with these agencies. If the commissioner examines a bank holding
25 company or any of its subsidiaries, other than a domestic bank,
26 using the commissioner's own examiners, the bank holding
27 company shall pay, within 10 days after receipt of a statement
28 from the commissioner, a fee of two hundred dollars (\$200) per
29 day for each examiner engaged in the examination plus, in the
30 event it is necessary for any examiner engaged in the examination
31 to travel outside this state, the travel expenses of the examiner. If
32 the commissioner examines a bank holding company or any of its
33 subsidiaries, other than a domestic bank, using independent public
34 accountants, the bank holding company shall pay, within 10 days
35 after receipt of a statement from the commissioner, the fee of the
36 independent public accountants.

37 1285. With respect to a trust company controlled by or under
38 common control with a title insurance company, the commissioner
39 in cooperation with the Insurance Commissioner shall adopt
40 reasonable rules and regulations for the conduct of the inspection

1 and examination authorized by Sections 1282 and 1284. Any such
2 examination or inspection shall be conducted pursuant to the
3 provisions of Article 4.7 (commencing with Section 1215) of
4 Chapter 2 of Part 2 of Division 1 of the Insurance Code.

5 1286. Nothing in this chapter shall be construed to authorize
6 the commissioner to require reports from a national bank or to
7 examine a national bank contrary to federal law.

8 1287. Pursuant to the authority contained in Section 1 of Article
9 XV of the California Constitution, the restrictions upon rates of
10 interest contained in Section 1 of Article XV of the California
11 Constitution shall not apply to any obligations of, loans made or
12 arranged by, or forbearances of or arranged by, a bank holding
13 company or a subsidiary of a bank holding company which is not
14 a bank. As used in this section, the terms “bank holding company”
15 and “subsidiary” mean a bank holding company or subsidiary as
16 defined in Chapter 17 (commencing with Section 1841) of Title 12
17 of the United States Code.

18 This section creates and authorizes an exempt class of persons
19 pursuant to Section 1 of Article XV of the Constitution. This section
20 does not exempt a bank holding company or a subsidiary of a bank
21 holding company from complying with all other applicable
22 provisions of law regulating the business of these companies.

23 This section does not exempt a bank holding company or a
24 subsidiary thereof from complying with all other laws or
25 regulations governing the business in which the bank holding
26 company or subsidiary is engaged.

27

28

CHAPTER 9. AUTHORIZATIONS FOR BANKS

29

30 1300. (a) Notwithstanding the provisions of Sections 1051,
31 1052, and 1054 of the Labor Code and Section 2947 of the Penal
32 Code, a bank or any affiliate thereof, licensed under the laws of
33 any state or of the United States, or any officer or employee thereof,
34 may deliver fingerprints taken of a director, an officer, an
35 employee, or an applicant for employment to local, state, or federal
36 law enforcement agencies for the purpose of obtaining information
37 as to the existence and nature of a criminal record, if any, of the
38 person fingerprinted relating to convictions, and to any arrest for
39 which that person is released on bail or on his or her own
40 recognizance pending trial, for the commission or attempted

1 *commission of a crime involving robbery, burglary, theft,*
2 *embezzlement, fraud, forgery, bookmaking, receiving stolen*
3 *property, counterfeiting, or involving checks or credit cards or*
4 *using computers.*

5 *(b) The Department of Justice shall, pursuant to Section 11105*
6 *of the Penal Code, and a local agency may, pursuant to Section*
7 *13300 of the Penal Code, furnish to the officer of the bank or*
8 *affiliate responsible for the final decision regarding employment*
9 *of the person fingerprinted, or to his or her designees having*
10 *responsibilities for personnel or security decisions in the usual*
11 *scope and course of their employment with the bank or affiliate,*
12 *summary criminal history information when requested pursuant*
13 *to this section. If, upon evaluation of the criminal history*
14 *information received pursuant to this section, the bank or affiliate*
15 *determines that employment of the person fingerprinted would*
16 *constitute an unreasonable risk to that bank or affiliate or its*
17 *customers, the person may be denied employment.*

18 *(c) Banks and their affiliates shall submit to the Department of*
19 *Justice fingerprint images and related information required by the*
20 *Department of Justice of all directors, officers, employees, or an*
21 *applicant for employment for the purpose of obtaining information*
22 *regarding the existence and content of a record of state and federal*
23 *convictions and also information regarding the existence and*
24 *content of a record of state and federal arrests for which the*
25 *Department of Justice establishes that the person is free on bail,*
26 *or on his or her own recognizance, pending trial or appeal.*

27 *(d) When the Department of Justice receives a request under*
28 *this section for federal summary criminal history information, it*
29 *shall forward the request to the Federal Bureau of Investigation.*
30 *Once the information is received from the Federal Bureau of*
31 *Investigation, the Department of Justice shall review, compile,*
32 *and disseminate the information to the federally chartered bank*
33 *or affiliate pursuant to paragraph (1) of subdivision (o) of Section*
34 *11105 of the Penal Code.*

35 *(e) When the Department of Justice receives a request for federal*
36 *summary criminal history information from a nonchartered bank,*
37 *it shall forward the request to the Federal Bureau of Investigation.*
38 *Once the information is received from the Federal Bureau of*
39 *Investigation, the Department of Justice shall review and provide*
40 *a fitness determination on an applicant for employment based on*

1 *criminal convictions or on arrests for which the person is released*
2 *on bail or on his or her own recognizance pending trial for the*
3 *commission or attempted commission of crimes specified in*
4 *subdivision (a).*

5 *(f) A bank or affiliate may request from the Department of*
6 *Justice subsequent arrest notification service, as provided pursuant*
7 *to Section 11105.2 of the Penal Code, for persons described in*
8 *subdivision (a).*

9 *(g) The Department of Justice shall charge a fee sufficient to*
10 *cover the cost of processing the requests described in this section.*

11 *(h) Any criminal history information obtained pursuant to this*
12 *section is confidential and no recipient shall disclose its contents*
13 *other than for the purpose for which it was acquired.*

14 *(i) "Affiliate," as used in this section, means any corporation*
15 *controlling, controlled by, or under common control with, a bank,*
16 *whether directly, indirectly, or through one or more intermediaries.*

17 *1301. (a) Notwithstanding Section 726 of the Code of Civil*
18 *Procedure or any other provision of law to the contrary, a state*
19 *or nationally chartered bank, its subsidiaries or affiliates*
20 *transacting business in this state, or any successor in interest*
21 *thereto, that originates, acquires, or purchases, in whole or in*
22 *part, any loan secured directly or collaterally, in whole or in part,*
23 *by a mortgage or deed of trust on real property, or any interest*
24 *therein, may bring an action for recovery of damages, including*
25 *exemplary damages not to exceed 50 percent of the actual*
26 *damages, against a borrower where the action is based on fraud*
27 *under Section 1572 of the Civil Code and the fraudulent conduct*
28 *by the borrower induced the original lender to make that loan.*

29 *(b) The provisions of this section shall not apply to loans secured*
30 *by single-family, owner-occupied residential real property, when*
31 *the property is actually occupied by the borrower as represented*
32 *to the lender in order to obtain the loan and the loan is for an*
33 *amount of one hundred fifty thousand dollars (\$150,000) or less,*
34 *as adjusted annually, commencing on January 1, 1987, to the*
35 *Consumer Price Index as published by the United States*
36 *Department of Labor.*

37 *(c) Any action maintained under this section for damages shall*
38 *not constitute a money judgment for deficiency or a deficiency*
39 *judgment within the meaning of Section 580a, 580b, or 580d of*
40 *the Code of Civil Procedure.*

1 *CHAPTER 10. RESTRICTIONS AND PROHIBITED PRACTICES*

2
3 *Article 1. General Provisions*

4
5 *1320. A bank or trust company may purchase, acquire, hold,*
6 *or lease real property or an interest therein only as follows:*

7 *(a) Such as may be necessary or convenient for the use,*
8 *operation or housing of its head office and branch offices, or for*
9 *the storage of records or other personal property, or for office*
10 *space for use by its officers or employees, or which may be*
11 *reasonably necessary for future expansion of its business, or which*
12 *is otherwise reasonably related to the conduct of its business. Real*
13 *property used by a bank as its banking premises may include in*
14 *addition to the space required for the transaction of its business*
15 *other space which may be let as a source of income.*

16 *(b) Such as may be conveyed to it in satisfaction in whole or in*
17 *part of debts previously contracted in the course of its business.*

18 *(c) Such as it may purchase or acquire at foreclosure sales*
19 *under mortgages or deeds of trust held by it, or under judgments*
20 *or decrees in its favor.*

21 *(d) Such as it may purchase or otherwise acquire when*
22 *necessary to minimize or prevent the loss or destruction of any*
23 *lien or interest therein.*

24 *(e) Such as it may purchase or otherwise acquire pursuant to*
25 *Section 1322.*

26 *A bank or trust company may sell, lease, or encumber real*
27 *property or any interest therein owned by it, or, with the written*
28 *approval of the commissioner, exchange the same for other real*
29 *property.*

30 *1321. Any real property not held for any purpose permitted by*
31 *subdivisions (a) and (e) of Section 1320 shall be sold whenever*
32 *the same can be sold for an amount sufficient to reimburse the*
33 *bank or trust company for all loss arising out of the loan for which*
34 *such real property was security or arising out of the original*
35 *investment. A bank or trust company shall not by the retention of*
36 *any real property acquired pursuant to this section engage in any*
37 *business not authorized by this division except to the extent*
38 *necessary in the orderly liquidation of an indebtedness owing to*
39 *the bank.*

40 *1322. (a) The Legislature finds and declares:*

1 (1) That it is necessary to increase job opportunities in real
2 estate development and construction and to provide additional
3 housing and commercial facilities in this state.

4 (2) That within the commercial banking community there exists
5 the expertise and ability to promote and assist in expansion of real
6 estate development projects in this state.

7 (3) That it is proper and appropriate to utilize that expertise
8 and ability by authorizing commercial banks to engage in real
9 estate development and management on an entrepreneurial basis.

10 (b) As used in this section, “real property investment” means
11 all forms of investing in real property, whether direct or in the
12 form of partnerships, joint ventures, or other methods of
13 investment. It includes, but is not limited to, the purchasing,
14 subdividing, and developing of real property or any interest
15 therein, the building of residential housing or commercial
16 improvements, and the owning, renting, leasing, managing,
17 operating for income, or selling of that property.

18 (c) A commercial bank may acquire and hold stock of one or
19 more corporations the primary activities of which are engaging
20 in real property investment, in which event the sum of (1)
21 investments made by a commercial bank pursuant to the authority
22 of this subdivision, (2) any loans and guarantees extended by a
23 commercial bank to, or for the benefit of, corporations whose stock
24 it holds pursuant to the authority of this subdivision, and (3) real
25 property investments made pursuant to the authority of subdivision
26 (d), unless a higher percentage is approved by the commissioner
27 in writing, shall not exceed 10 percent of the total assets of the
28 bank.

29 (d) A commercial bank may engage in real property investment.
30 The total of all real property investments made pursuant to the
31 authority of this subdivision, unless a higher percentage is
32 approved by the commissioner in writing, shall not exceed the total
33 shareholders’ equity of the bank.

34 (e) Prior to initially engaging in real property investment
35 activities authorized by this section, a commercial bank shall make
36 application with the commissioner for approval of its general plan
37 of real property investment. The application for approval shall be
38 in letter form, shall contain a copy of the general plan for real
39 property investment as approved or adopted by the board of
40 directors of the bank, which shall include a brief description of

1 *either the activities of the corporations the bank will invest in or*
2 *the activities the bank will engage in, or both, the approximate*
3 *amount to be invested, the extent, if any, of diversification of those*
4 *activities or investment, and the approximate date of the initial*
5 *investment, and shall be signed by the chief executive officer of*
6 *the bank. Unless the commissioner finds (1) that the capital, assets,*
7 *management, earnings, and liquidity of the commercial bank are,*
8 *on a composite basis, not satisfactory, or (2) that the plan for the*
9 *commercial bank to engage in real property investment or to*
10 *acquire and hold the stock of one or more real property investment*
11 *corporations is unsafe or unsound, the commissioner shall approve*
12 *the application. An application for approval shall be deemed*
13 *approved on the 46th day after the application is filed with the*
14 *commissioner, unless the commissioner earlier makes a final*
15 *decision on the application or extends the period for approving*
16 *or denying the application. For purposes of this subdivision, an*
17 *application for approval shall be deemed to be filed with the*
18 *commissioner on the date when the application, substantially in*
19 *compliance with the requirements of this subdivision, is received*
20 *by the commissioner. Upon the filing of the application for*
21 *approval, the applicant shall pay to the commissioner a filing fee*
22 *of five hundred dollars (\$500).*

23 *(f) The legality of any investment lawfully made pursuant to this*
24 *section as it read prior to the amendment of this section shall not*
25 *be affected by the existing form of this section, nor shall this section*
26 *be construed to require the changing of any investments heretofore*
27 *lawfully made.*

28 *1323. Any director, officer, or employee of a bank or of a*
29 *foreign banking corporation who asks for or receives, or consents*
30 *or agrees to receive, any commission, emolument, or gratuity or*
31 *any money, property, or thing of value for his own personal benefit*
32 *or of personal advantage for procuring or endeavoring to procure*
33 *for any person any loan from such bank, or the purchase or*
34 *discount of any note, draft, check, bill of exchange, or other*
35 *obligation by such bank, or for permitting any person to overdraw*
36 *any account with such bank, is guilty of a felony.*

37 *1324. Any director, officer, agent, or employee of any bank*
38 *who knowingly receives or possesses himself or herself of any of*
39 *its property otherwise than in payment of a just demand, and with*
40 *intent to defraud, omits to make or cause to be made a full and*

1 true entry thereof in its books and accounts or concurs in omitting
2 to make any material entry thereof is guilty of a felony.

3 1325. Any director, officer, agent, or employee of a bank who
4 knowingly concurs in making or publishing any written report,
5 exhibit, or statement of its affairs or pecuniary condition containing
6 any material statement which is false, or having the custody of its
7 books willfully refuses or neglects to make any proper entry in
8 such books as required by law, or to exhibit or allow the same to
9 be inspected or extracts to be taken therefrom by the commissioner
10 or his or her deputies or examiners, is guilty of a felony.

11 1326. No bank shall publish a statement of its resources or
12 liabilities in connection with those of any other bank, unless such
13 statement shall show the resources and liabilities of each bank
14 separately.

15 1327. (a) Any person who willfully and knowingly makes,
16 circulates, or transmits to another or others, any statement or
17 rumor, written, printed, or by word of mouth, which is untrue in
18 fact and is directly or by inference derogatory to the financial
19 condition or affects the solvency or financial standing of any bank
20 doing business in this state, or who knowingly counsels, aids,
21 procures, or induces another to start, transmit, or circulate any
22 such statement or rumor, is guilty of a misdemeanor punishable
23 by a fine of not more than one thousand dollars (\$1,000), or by
24 imprisonment for not more than one year, or both.

25 (b) The provisions of Section 329 shall not apply to this section.

26 1328. (a) A bank or trust company may engage in the business
27 of renting safe deposit boxes and may receive personal property
28 for safekeeping and storage on its banking premises.

29 (b) A copy of any safe deposit rental agreement, or personal
30 property safekeeping and storage agreement, which is prepared
31 by the bank or trust company and signed by the customer shall be
32 delivered to the customer at the time the agreement is signed if the
33 agreement is signed at a place of business of the bank or trust
34 company. If the agreement is not signed at a place of business of
35 the bank or trust company, the bank or trust company shall mail
36 or deliver a copy of the agreement to the customer within 10
37 calendar days after the bank or trust company receives it. The
38 contract shall not contain any blank spaces to be filled in after the
39 customer signs the contract. If more than one customer has signed
40 the agreement, the bank or trust company may comply with this

1 section by mailing or delivering the copy to any one of the
2 customers who reside at the same address. A copy shall also be
3 mailed or delivered to any other customer who has signed the
4 agreement and who does not reside at the same address. As used
5 in this section, “copy” means a reproduction, facsimile, or
6 duplicate. A bank or trust company which fails to comply with this
7 section is liable to its customer for any actual damages suffered
8 by the customer as a result of that failure. The remedy provided
9 by this section is nonexclusive and is in addition to any remedies
10 or penalties available under other laws of this state.

11 1329. (a) In this section, “subject person,” when used with
12 respect to a bank, means any director or officer of the bank, any
13 controlling person of the bank, or any director or officer of a
14 controlling person of the bank. For purposes of this subdivision,
15 “controlling person” has the meaning set forth in subdivision (c)
16 of Section 1250.

17 (b) No bank shall purchase any real or personal property or
18 any interest in real or personal property, including, but not limited
19 to, a leasehold, or any contract arising from the sale of real or
20 personal property or any note or bond in which any subject person
21 of such bank is personally or financially interested, directly or
22 indirectly, for such person’s own account, for such person, or as
23 the partner or agent of others, without the prior approval by the
24 board of directors of the bank and for not more than the current
25 market value of the property purchased.

26 1330. (a) In this section, “subject person” has the meaning
27 set forth in subdivision (a) of Section 1329.

28 (b) No subject person of a bank shall purchase, directly or
29 indirectly, or be interested in the purchase of, any of the bank’s
30 obligations or assets without the prior approval of the board of
31 the directors of the bank and for an amount less than the then
32 current market value. Every person violating this section shall be
33 liable to the people of this state, for each offense, for twice the
34 market value of the assets so purchased.

35 1331. (a) For purposes of this section, the following terms
36 have the following meanings:

37 (1) “Carrying a security” means maintaining, reducing, or
38 retiring indebtedness originally incurred to acquire a security.

39 (2) “Controlling person” has the same meaning specified in
40 Section 1250.

1 (3) “Security” has the following meanings:

2 (A) When used with respect to a bank, “security” has the same
3 meaning set forth in subdivision (c) of Section 1200.

4 (B) When used with respect to any other person, “security” has
5 the same meaning set forth in Section 25019 of the Corporations
6 Code.

7 (b) No bank shall acquire, hold, extend credit on the security
8 of, or extend credit for the purpose of acquiring or carrying, any
9 security of the bank or of any controlling person of the bank.

10 (c) (1) Any bank which acquires or holds securities in violation
11 of this section shall be liable to the people of this state for twice
12 the market, book, or face value of the securities, whichever is
13 greatest.

14 (2) Any bank which extends credit in violation of this section
15 shall be liable to the people of this state for twice the amount of
16 the credit so extended.

17 (d) This section does not apply to any of the following
18 transactions:

19 (1) Any acquisition or extension of credit by a bank which is
20 necessary to reduce or prevent loss to the bank on debts previously
21 contracted in good faith.

22 (2) Any redemption by a bank of any of its redeemable shares
23 in accordance with applicable provisions of this division and of
24 Division 1 (commencing with Section 100) of Title 1 of the
25 Corporations Code.

26 (3) Any acquisition by a bank of any of its shares, other than
27 an acquisition of the type described in paragraph (1) or (2), if the
28 acquisition is approved in advance by the commissioner.

29 (e) The provisions of Section 329 shall not apply to this section.

30 1332. Any officer, director, trustee, employee, or agent of any
31 bank in this state, who abstracts or willfully misapplies any of the
32 money, funds, or property of the bank, or willfully misapplies its
33 credit, is guilty of a felony. Upon conviction, the court shall, in
34 addition to any other punishment imposed, order the person to
35 make full restitution to the bank. Nothing in this section shall be
36 deemed or construed to repeal, amend or impair any existing
37 provision of law prescribing a punishment for such an offense.

38 1333. (a) Every director of a bank in this state who does either
39 of the following is guilty of a misdemeanor:

1 (1) *In case of the fraudulent insolvency of such bank, the director*
2 *participated in the fraud.*

3 (2) *Wilfully does any act as the director that is expressly*
4 *forbidden by law or wilfully omits to perform any duty imposed*
5 *by law upon him or her as the director.*

6 (b) *The insolvency of a bank is deemed fraudulent for the*
7 *purposes of this section, unless its affairs appear upon investigation*
8 *to have been administered clearly, legally, and with the same care*
9 *and diligence that agents receiving a compensation for their*
10 *services are bound, by law, to observe.*

11 1334. *An officer or agent of any bank in this state, who makes*
12 *or delivers any guaranty or endorsement on behalf of such bank,*
13 *whereby it may become liable upon any of its discounted notes,*
14 *bills or obligations, in a sum beyond the amount of loans and*
15 *discounts which such bank may legally make, is guilty of a*
16 *misdemeanor.*

17 1335. *A director of a bank, organized under the laws of this*
18 *state, who concurs in any vote or act of the directors of such*
19 *corporation, or any of them, by which it is intended to make a loan*
20 *or discount to any director of such corporation, or upon paper*
21 *upon which any such director is liable or responsible to an amount*
22 *exceeding the amount allowed by the statutes is guilty of a*
23 *misdemeanor.*

24 1336. *Any director, trustee, officer, or employee of any bank*
25 *organized under the laws of this state, who makes or maintains,*
26 *or attempts to make or maintain, a deposit of such bank's funds*
27 *with any other corporation on condition, or with the understanding,*
28 *express or implied, that the corporation receiving such deposit*
29 *make a loan or advance, directly or indirectly, to any director,*
30 *trustee, officer, or employee of the corporation so making or*
31 *maintaining or attempting to make or maintain such deposit is*
32 *guilty of a felony.*

33 1337. *Any officer or employee of any bank organized under*
34 *the laws of this state, who intentionally conceals from the directors*
35 *of the bank any discounts or loans made by it between the regular*
36 *meetings of its board, or the purchase of any securities or the sale*
37 *of its securities during that period, or knowingly fails to report to*
38 *the board when required to do so by law, all discounts or loans*
39 *made by it and all securities purchased or sold by it between the*
40 *regular meetings of its board, is guilty of a misdemeanor.*

1 1338. Every officer, agent, teller, or clerk of any bank, and
2 every individual banker, or agent, teller, or clerk of any individual
3 banker, who receives any deposits, knowing that the bank,
4 association, or banker is insolvent, is guilty of a misdemeanor.

5 1339. Any officer, director, trustee, employee, or agent of any
6 bank, who willfully makes a false or untrue entry in any book or
7 record or in any report, tag, or statement of the business, affairs,
8 or condition or in connection with any transaction of the bank,
9 with intent to deceive any officer, director or trustee thereof, or
10 any agent or examiner, private or official, employed or lawfully
11 appointed to examine into its condition or into any of its affairs
12 or transactions, or any public officer, office, or board to which
13 the bank is required by law to report, or which has authority by
14 law to examine into its affairs or transactions, or into any of its
15 affairs or transactions, or who, with like intent, willfully omits to
16 make a new entry of any matter particularly pertaining to the
17 business, property, condition, affairs, transactions, assets, or
18 accounts of the bank in any book, record, report, statement, or tag
19 of the bank, or who with like intent alters, abstracts, conceals, or
20 destroys any book, record, report, statement, or tag of the bank
21 made, written, or kept, or required to be made, written, or kept by
22 him or her or under his or her direction, is guilty of a felony.

23 1340. Unless specifically authorized by law or by the
24 commissioner, a bank shall not become, act as, or in any other
25 manner assume the duties or liabilities of, a general partner. For
26 purposes of this section, “general partner” has the meaning set
27 forth in subdivision (m) of Section 15901.02 of the Corporations
28 Code.

29 1341. A bank, or the agent of a bank, that has received a notice
30 pursuant to Section 7507.6 of the Business and Professions Code,
31 shall not make a subsequent assignment to skip trace, locate, or
32 repossess a vehicle without simultaneously, and in the same manner
33 by which the assignment is given, advising the assignee of the
34 assignment of the information contained in the notice. As used in
35 this section, “assignment” has the same meaning set forth in
36 Section 7500.1 of the Business and Professions Code.

Article 2. Loans to Insiders

1
2
3 1360. It is the intent of the Legislature that the provisions of
4 this article, insofar as they are contained in Regulation O (12
5 C.F.R. Part 215) of the Federal Reserve Board, conform, and be
6 interpreted by anyone construing the provisions of this article to
7 so conform, to Regulation O, to any rule or interpretation
8 promulgated thereunder by the Board of Governors of the Federal
9 Reserve System, and to any interpretation issued by an official or
10 employee of the Federal Reserve System duly authorized to issue
11 the interpretation.

12 1361. As used in this article:

13 (a) “Bank” means:

14 (1) Any commercial bank, industrial bank, or trust company
15 incorporated under the laws of this state.

16 (2) Any foreign (other nation) bank that is licensed by the
17 commissioner under Article 3 (commencing with Section 1800) of
18 Chapter 20 to maintain a depository agency or branch office, as
19 defined in Section 1750, in this state, with respect to any office of
20 that type.

21 (3) Any corporation incorporated under the laws of this state
22 that is incorporated for the purpose of engaging in, or that is
23 authorized by the commissioner to engage in, business under
24 Article 1 (commencing with Section 1850) of Chapter 21.

25 (4) Any foreign corporation that is licensed by the commissioner
26 under Article 1 (commencing with Section 1850) of Chapter 21 to
27 maintain an office in this state and to transact at the office business
28 under that article, with respect to any office of that type.

29 (5) When used to designate a person that extends credit, any
30 subsidiary of a bank, as defined in paragraph (1), (2), (3), or (4).

31 (b) “Company” has the meaning set forth in subdivision (b) of
32 Section 215.2 of Regulation O.

33 (c) “Executive officer” has the meaning set forth in paragraph
34 (1) of subdivision (e) of Section 215.2 of Regulation O. Also,
35 “executive officer,” when used with respect to any bank of the type
36 described in paragraph (2) or (4) of subdivision (a), includes the
37 manager of each office of the type referred to in paragraph (2) or
38 (4) of subdivision (a) that the bank maintains in this state.

1 (d) “*Extension of credit*” has the meaning set forth in Section
2 215.3 of Regulation O. However, for purposes of this subdivision,
3 the term “*member bank*,” as used in Section 215.3, means a bank.

4 (e) “*Regulation O*” means Regulation O (Part 215 (commencing
5 with Section 215.1) of Title 12 of the Code of Federal Regulations)
6 of the Board of Governors of the Federal Reserve System.

7 (f) “*Subsidiary*” has the meaning set forth in Section 1841(d)
8 of Title 12 of the United States Code. However, for purposes of
9 this subdivision, the term “*bank holding company*,” as used in
10 Section 1841(d) of Title 12 of the United States Code, means a
11 bank holding company, as defined in Section 1841(a) of Title 12
12 of the United States Code, or a bank, and the term “*board*,” as
13 used in Section 1841(d) of Title 12 of the United States Code,
14 means the commissioner.

15 1362. Sections 215.2, 215.3, 215.4, 215.5, 215.8, and 215.9 of
16 Regulation O in all of their particulars, including footnotes, are
17 hereby referred to, incorporated by reference into this article, and
18 adopted, subject to the following:

19 (a) The term “*this Subpart*,” as used in the referenced sections
20 of Regulation O, means this article.

21 (b) Subdivision (j) of Section 215.2 of Regulation O is not
22 applicable. Instead, the term “*member bank*,” as used in the
23 referenced sections of Regulation O, means a bank.

24 (c) The term “*executive officer*,” as used in the referenced
25 sections of Regulation O, includes, in the case of a bank of the
26 type described in paragraph (2) or (4) of subdivision (a) of Section
27 1361, the manager of each office of the type referred to in
28 paragraph (2) or (4) of subdivision (a) of Section 1361 that the
29 bank maintains in this state.

30 (d) The definition of “*lending limit*” in subdivision (i) of Section
31 215.2 of Regulation O is not applicable; instead, the term “*lending*
32 *limit*,” as used in the referenced sections of Regulation O, means
33 an amount equal to the limit on obligations of a single obligor set
34 forth in Section 1481, and any reference in the referenced sections
35 of Regulation O to the lending limit specified in subdivision (i) of
36 Section 215.2 is considered to be a reference to the limit specified
37 in Section 1481.

38 (e) (1) Any company which is majority owned by one or more
39 executive officers or directors of a bank, individually or
40 collectively, is deemed to be a related interest of each of those

1 *executive officers or directors for purposes of the referenced*
2 *sections of Regulation O.*

3 *(2) In case an individual who is an executive officer of a bank*
4 *is also a director or executive officer of a company, the company*
5 *is deemed to be a related interest of the individual for purposes of*
6 *the referenced sections of Regulation O except subdivision (c) of*
7 *Section 215.4. However, this paragraph shall not apply to an*
8 *extension of credit by a bank to any of the following companies:*

9 *(A) A bank holding company of which the bank is a subsidiary.*

10 *(B) Any subsidiary of the bank holding company.*

11 *(C) Any nonprofit company engaged in religious, charitable,*
12 *educational, scientific, literary, social, or recreational purposes,*
13 *provided that the individual whose position as a director or*
14 *executive officer of the company at issue does not receive*
15 *compensation in excess of one thousand dollars (\$1,000) per year*
16 *for serving as a director or executive officer of the company.*

17 *(3) In case a bank in making an extension of credit becomes*
18 *subject to the requirements set forth in subdivision (b)(1)(i) of*
19 *Section 215.4 of Regulation O because of paragraph (1) or (2),*
20 *the bank shall be deemed to fulfill the requirement if the extension*
21 *of credit is promptly reported to the board of the bank.*

22 *1363. No bank shall extend credit in an aggregate amount*
23 *greater than the amount permitted in paragraph (4) of subdivision*
24 *(c) of Section 215.5 of Regulation O to any company that is*
25 *majority owned by one or more executive officers of the bank,*
26 *individually or collectively. For purposes of paragraph (4) of*
27 *subdivision (c) of Section 215.5 of Regulation O, the total amount*
28 *of credit extended by the bank to the company is considered to be*
29 *extended to each of those executive officers.*

30 *1364. In making any extension of credit that is subject to this*
31 *article, a bank shall comply with all other applicable provisions*
32 *of this division relating to extensions of credit by banks.*

33 *1365. No provision of this article or of Article 3 (commencing*
34 *with Section 1480) of Chapter 14 shall apply to an advance of*
35 *money made by a bank pursuant to Section 317 of the Corporations*
36 *Code.*

37 *1366. A bank may make a loan, otherwise complying with the*
38 *provisions of this division, for the benefit of a trust, notwithstanding*
39 *that the bank or any one or more executive officers or directors*
40 *of the bank are trustees of the trust.*

1 1367. Any bank that makes an extension of credit in violation
 2 of this article is subject to a civil penalty pursuant to Section 329.
 3 Any person, other than the bank making the extension of credit,
 4 who knowingly makes or procures an extension of credit in
 5 violation of this article is guilty of a felony.

6
 7 *CHAPTER 11. AGENCY ACTIVITIES*

8
 9 *Article 1. General Provisions*

10
 11 1380. In this chapter, unless the context otherwise requires:

12 (a) “Authorized agency activities” means receiving deposits,
 13 renewing time deposits, closing loans, servicing loans, and
 14 receiving payments on loans and other obligations. “Authorized
 15 agency activities” includes ministerial functions such as providing
 16 loan applications, assembling documents, providing a location
 17 for returning documents necessary for making a loan, providing
 18 loan account information, receiving payments, disbursing loan
 19 funds, evaluating loan applications, and other activities that the
 20 commissioner may specify by order or regulation. However,
 21 “authorized agency activities” does not include any other activities
 22 that the commissioner may specify by order or regulation.

23 (b) “Insured depository institution” means any bank, savings
 24 and loan association, savings association, savings bank, or
 25 industrial loan company the deposits of which are insured by the
 26 Federal Deposit Insurance Corporation. “Insured depository
 27 institution” includes any depository institution affiliate within the
 28 meaning of Section 18(r) of the Federal Deposit Insurance Act (12
 29 U.S.C. Sec. 1828(r)).

30 1381. This chapter does not apply to a California state bank
 31 having an insured depository institution engage in authorized
 32 agency activities as its agent or to a California state bank engaging
 33 in authorized agency activities as agent for an insured depository
 34 institution in any case other than a case where, but for the
 35 provisions of Sections 1389 and 1396, an office of the agent would
 36 for regulatory purposes be considered to be an office of the
 37 principal.

38 1382. (a) In this section, “affiliated,” when used with respect
 39 to a California state bank and an insured depository institution,
 40 means that the California state bank controls the insured

1 *depository institution, the insured depository institution controls*
2 *the California state bank, or the California state bank and the*
3 *insured depository institution are under common control, directly*
4 *or indirectly through one or more intermediaries. For purposes*
5 *of this subdivision, “control” has the meaning set forth in Section*
6 *1250.*

7 *(b) In case a California state bank and an insured depository*
8 *institution are affiliated, the prior approval requirement set forth*
9 *in Section 1384 or 1391 is deemed to be satisfied if the California*
10 *state bank files a notice with the commissioner and, within 30 days*
11 *or any longer period to which the California state bank consents,*
12 *the commissioner either (1) issues a written statement not objecting*
13 *to the notice or (2) does not issue a written objection to the notice.*

14 *(c) (1) A notice filed by a California state bank under*
15 *subdivision (b) shall contain the following information:*

16 *(A) The name of the California state bank.*

17 *(B) The name and location of the main or head office of the*
18 *affiliated insured depository institution.*

19 *(C) A description of the proposed agency, including*
20 *identification of the institution that is to be the principal,*
21 *identification of the institution that is to be the agent, and*
22 *specification of the activities in which the agent is to engage on*
23 *behalf of the principal.*

24 *(D) Any other information that the commissioner may require.*

25 *(2) A notice filed by a California state bank under subdivision*
26 *(b) shall be in the form, shall be signed in the manner, and shall,*
27 *if the commissioner requires by regulation or order, be verified*
28 *in the manner that the commissioner may by regulation or order*
29 *require.*

30 *(3) A notice filed by a California state bank under subdivision*
31 *(b) shall be accompanied by a filing fee of two hundred fifty dollars*
32 *(\$250).*

33 *(d) For purposes of subdivision (b), a notice by a California*
34 *state bank is deemed to be filed with the commissioner at the time*
35 *when the complete notice, including any amendments or*
36 *supplements, containing all the information required by the*
37 *commissioner, and otherwise complying with subdivision (c) is*
38 *received by the commissioner.*

1 (e) In determining whether or not to object to a notice by a
2 California state bank, the commissioner shall consider the factors
3 set forth in Section 1387 or 1394, as the case may be.

4
5 Article 2. California State Bank as Principal

6
7 1384. Notwithstanding the provisions of Chapter 4
8 (commencing with Section 1070), a California state bank may,
9 with the prior approval of the commissioner and subject to any
10 regulations that the commissioner may prescribe, have an insured
11 depository institution engage in authorized agency activities as
12 its agent.

13 1385. An application by a California state bank for approval
14 to have an insured depository institution engage in authorized
15 agency activities as its agent shall be in the form, shall contain
16 the information, shall be signed in the manner, and shall, if the
17 commissioner so requires by regulation or order, be verified in
18 the manner that the commissioner may, by regulation or order,
19 require.

20 1386. An application by a California state bank for approval
21 to have an insured depository institution engage in authorized
22 agency activities as its agent shall be accompanied by a filing fee
23 of two hundred fifty dollars (\$250).

24 1387. In determining whether to approve or deny an application
25 by a California state bank for approval to have an insured
26 depository institution engage in authorized agency activities as
27 its agent, the commissioner shall consider both of the following:

28 (a) Whether the proposed agency arrangement is consistent
29 with the safe and sound operation of the California state bank.

30 (b) Any other factors that the commissioner deems relevant.

31 1388. No California state bank may have an insured depository
32 institution conduct as its agent any activity that the California
33 state bank is prohibited from conducting itself.

34 1389. No office of an insured depository institution that is
35 performing authorized agency activities as agent for a California
36 state bank in accordance with this article shall, on that account,
37 be deemed to be an office of the California state bank.

38 1390. If the commissioner finds that any activity performed by
39 an insured depository institution as agent for a California state
40 bank is not an authorized agency activity or that the agency

1 *arrangement is inconsistent with safe and sound banking practices,*
2 *the commissioner may order the California state bank to terminate*
3 *the agency arrangement.*

4
5 *Article 3. California State Bank as Agent*
6

7 *1391. Notwithstanding the provisions of Chapter 4*
8 *(commencing with Section 1070), a California state bank may,*
9 *with the prior approval of the commissioner and subject to any*
10 *regulations that the commissioner may prescribe, engage in*
11 *authorized agency activities as agent for an insured depository*
12 *institution.*

13 *1392. An application by a California state bank for approval*
14 *to engage in authorized agency activities as agent for an insured*
15 *depository institution shall be in the form, shall contain the*
16 *information, shall be signed in the manner, and shall, if the*
17 *commissioner so requires by regulation or order, be verified in*
18 *the manner that the commissioner may, by regulation or order,*
19 *require.*

20 *1393. An application by a California state bank for approval*
21 *to engage in authorized agency activities as agent for an insured*
22 *depository institution shall be accompanied by a filing fee of two*
23 *hundred fifty dollars (\$250).*

24 *1394. In determining whether to approve or deny an application*
25 *by a California state bank for approval to engage in authorized*
26 *agency activities as agent for an insured depository institution,*
27 *the commissioner shall consider both of the following factors:*

28 *(a) Whether the proposed agency arrangement is consistent*
29 *with the safe and sound operation of the California state bank.*

30 *(b) Any other factors that the commissioner deems relevant.*

31 *1395. No California state bank may conduct any activity as an*
32 *agent for an insured depository institution that the California state*
33 *bank would be prohibited from conducting as a principal.*

34 *1396. (a) No office of a California state bank that conducts*
35 *authorized agency activities as agent for an insured depository*
36 *institution in accordance with this article shall, on that account,*
37 *be deemed to be an office of the insured depository institution.*

38 *(b) For purposes of this division, no insured depository*
39 *institution that has a California state bank engaged in authorized*

1 agency activities as its agent shall on that account be deemed to
2 be transacting business in this state.

3 1397. If the commissioner finds that any activities performed
4 by a California state bank as agent for an insured depository
5 institution are not authorized agency activities or that the agency
6 arrangement is inconsistent with safe and sound banking practices,
7 the commissioner may order the California state bank to terminate
8 the agency arrangement.

9

10 *CHAPTER 12. DEPOSITS*

11

12 *Article 1. Depositors*

13

14 1400. A bank account by or in the name of a minor shall be
15 held for the exclusive right and benefit of such minor and shall be
16 paid to such minor or to his order and payment so made is a valid
17 release and discharge to the bank for such deposit or any part
18 thereof.

19 1401. A bank account by or in the name of a married person
20 shall be held for the exclusive right and benefit of the person, shall
21 be free from the control or lien of any other person except a
22 creditor, and shall be paid to the person or to the order of the
23 person, and payment so made is a valid and sufficient release and
24 discharge to the bank for the deposit or any part thereof.

25 1402. A bank account that is a multiple-party account as
26 defined in Section 5132 of the Probate Code is governed by Part
27 2 (commencing with Section 5100) of Division 5 of the Probate
28 Code.

29 1403. No bank, directly or indirectly, by any device whatever,
30 shall pay any interest on any demand deposit except to the extent
31 that the payment of interest on demand deposits is permitted to
32 member banks of the Federal Reserve System or to banks whose
33 deposits are insured by the Federal Deposit Insurance Corporation
34 or any successor federal agency insuring bank deposits. This
35 section shall not apply to any deposit which is payable only at an
36 office of the bank located outside of the states of the United States
37 and the District of Columbia.

38 1404. Notwithstanding Section 10145 of the Business and
39 Professions Code or any other provision of law, but subject to the
40 limitations of Section 854, benefits accruing from the placement

1 *in a noninterest bearing account of a financial institution of funds*
2 *received by a real estate broker who collects payments or provides*
3 *services in connection with a loan secured by a lien on real*
4 *property under subdivision (d) of Section 10131 or Section 10131.1*
5 *of the Business and Professions Code shall inure to the broker;*
6 *unless otherwise agreed in writing by the broker and the lender*
7 *or note owner on the loan. A borrower shall receive at least 2*
8 *percent simple interest per annum on impound account payments*
9 *covered by Section 2954.8 of the Civil Code. For purposes of this*
10 *section “financial institution” means any institution the business*
11 *of which is engaging in financial activities as described in Section*
12 *1843 (k) of Title 12 of the United States Code.*

13 *1405. (a) Notwithstanding Section 10145 of the Business and*
14 *Professions Code or any other provision of law, benefits accruing*
15 *from the placement in an interest bearing account of a financial*
16 *institution of funds received by a real estate broker, as defined in*
17 *Section 10131 of the Business and Professions Code, who collects*
18 *payments or provides services for an institutional investor in*
19 *connection with a loan secured by commercial real property may*
20 *inure to the real estate broker, if agreed to in writing by the real*
21 *estate broker and that institutional investor as to that loan.*

22 *(b) For purposes of this section, the following definitions shall*
23 *apply:*

24 *(1) “Commercial real property” means real estate improved*
25 *with other than a one-to-four family residence.*

26 *(2) “Financial institution” means any institution the business*
27 *of which is engaging in financial activities as described in Section*
28 *1843(k) of Title 12 of the United States Code.*

29 *(3) “Institutional investor” has the meaning set forth in*
30 *subdivision (i) of Section 50003.*

31 *1406. (a) In this section:*

32 *(1) “Creditor” includes, but is not limited to, a depositor.*

33 *(2) “Insolvency,” when used with respect to a bank, means that*
34 *the bank is unable to pay its debts as they come due.*

35 *(b) This section does not apply to any of the following:*

36 *(1) Any transaction authorized under Section 1463 or 1465.*

37 *(2) Any transaction made by a bank in the ordinary course of*
38 *its business.*

39 *(c) No bank may pay or secure a creditor if the bank does so*

40 *(1) after committing an act of insolvency or in contemplation of*

1 *insolvency and (2) with a view to preventing the application of its*
2 *assets in the manner prescribed in Chapter 8 (commencing with*
3 *Section 600) of Division I or with a view to the preference of one*
4 *creditor to another.*

5 *(d) Any transaction made by a bank in violation of this section*
6 *is void.*

7 *1407. An overdraft of more than 90 days standing shall not be*
8 *allowed as an asset of any bank.*

9 *1408. A bank may act as a depositary, paying agent, trustee,*
10 *or fiscal agent for the holding or handling of public funds or*
11 *securities notwithstanding the fact that a member of the legislative*
12 *body or an officer or employee of the depositor is an officer,*
13 *employee, or stockholder of such bank, or of a holding company*
14 *that owns any of the stock of such bank. Such member of a*
15 *legislative body, or such officer or employee thereof, shall not be*
16 *deemed “interested in any contract” as that phrase is used in*
17 *Section 1090 of the Government Code, if his sole interest is the*
18 *fact that he is an officer, employee, or stockholder of the bank*
19 *selected to act as such depositary, paying agent or fiscal agent.*

20 *An officer or employee of a local public agency shall be deemed*
21 *to have only a “remote interest” in a contract, as that phrase is*
22 *used in Section 1091 of the Government Code, where such contract*
23 *is entered into without competitive bidding under a procedure*
24 *established by law, if his sole interest is that of an officer, director,*
25 *or employee, of a bank, bank holding company, or savings and*
26 *loan association with which a party to the contract has the*
27 *relationship of borrower or depositor, debtor or creditor, and if*
28 *the conditions of subdivision (a) of Section 1091 of the Government*
29 *Code are met.*

30 *1409. When a statement of account has been rendered by a*
31 *bank to a depositor accompanied by vouchers, if any, which are*
32 *the basis for debit entries in such account, such account shall,*
33 *after the period of four years from the date of its rendition, in the*
34 *event no objection thereto has been theretofore made by the*
35 *depositor, be deemed finally adjusted and settled and its*
36 *correctness conclusively presumed and such depositor shall*
37 *thereafter be barred from questioning the correctness of such*
38 *account for any cause.*

39 *A statement of account within the meaning of this section shall*
40 *be deemed to have been rendered on a savings or time account*

1 when the bank, by making a notation in the depositor's bank book
2 or in some other manner reasonably calculated to give notice
3 thereof to the depositor indicates that a certain sum is the correct
4 balance of the account.

5 Nothing herein shall be construed to relieve the depositor from
6 the duty now imposed by law of exercising due diligence in the
7 examination of such account and vouchers, if any, when rendered
8 by the bank and of immediate notification to the bank upon
9 discovery of any error therein, nor from the legal consequences
10 of neglect of such duty; nor to prevent the application of subsection
11 (3) of Section 340 of the Code of Civil Procedure to cases governed
12 thereby.

13 1410. (a) No bank shall impose any charge on a savings
14 account or on a depositor for the failure of a depositor to deposit,
15 or for the late deposit of, any agreed periodic installment deposit
16 into that account. A bank shall pay interest on savings accounts
17 as to which a depositor has agreed to make periodic installment
18 deposits at a rate of interest per annum that is not less than the
19 lowest rate paid on other types of savings deposits.

20 (b) As used in this section "savings account" means a Christmas
21 club account, a vacation club account, or other similar periodic
22 installment deposit account maintained by a natural person,
23 irrespective of its classification as a savings deposit or time deposit
24 open account for purposes of state or federal law or regulations.

25 1411. (a) For the purposes of this section:

26 (1) "Customer" means one or more natural persons.

27 (2) "Debt" means an interest-bearing obligation or an
28 obligation which by its terms is payable in installments, which has
29 not been reduced to judgment, arising from an extension of credit
30 to a natural person primarily for personal, family, or household
31 purposes, and does not mean a charge for bank services or a debit
32 for uncollected funds or for an overdraft of an account imposed
33 by a bank on a deposit account.

34 (b) A bank is limited in exercising any setoff for a debt claimed
35 to be owed to the bank by a customer in that a setoff shall not
36 result in an aggregate balance of less than one thousand dollars
37 (\$1,000) as shown on the records of the bank for all demand
38 deposit accounts maintained by a customer with the bank or any
39 branch thereof.

1 (c) Not later than the day following the exercise of any setoff
2 with respect to a deposit account for any debt claimed to be owed
3 to the bank by a customer, the bank shall deliver to each customer
4 personally or send by first-class mail postage prepaid to the
5 address of each customer as shown on the records of the bank a
6 written notice in at least 10-point type containing the following:

7 (1) A statement that the bank has set off a debt or a portion
8 thereof against the customer’s deposit account, identifying the
9 account, and giving the respective balances before and after the
10 setoff.

11 (2) A statement identifying the debt set off against the account
12 and giving the respective balances due before and after the setoff.

13 (3) A statement that if the customer claims that the debt has
14 been paid or is not now owing, or that the funds in the deposit
15 account consist of moneys expressly exempt pursuant to Chapter
16 4 (commencing with Section 703.010) of Division 2 of Title 9 of
17 Part 2 of the Code of Civil Procedure, and listed in the notice, the
18 customer may execute and return the notice to the bank by mail
19 at the address shown or personally to the bank branch where the
20 customer’s account is maintained not later than 20 days after the
21 date of mailing or personal delivery.

22 (4) A statement that if the notice is executed and returned, the
23 bank may file an action in court to collect the debt; that if a lawsuit
24 is filed, the customer will be notified and have an opportunity to
25 appear and defend; and that if the bank is successful, the customer
26 will be liable for court costs, and attorney’s fees, if the debt so
27 provides.

28 (5) A response form in at least 10-point type containing
29 substantially the following:

30
31 “The debt described in the Notice of Setoff received from the
32 bank is ____ is not ____ my debt or the debt of another
33 person in whose name the account is maintained.

34 “I claim that the debt:
35 ____ has been paid.
36 ____ is not now owing.
37 ____ is not subject to setoff because the money in the account is:
38 ____ Paid earnings (CCP 704.070)
39 ____ Proceeds from execution sale of or insurance for loss
40 of a motor vehicle (CCP 704.010)

1 *the bank has a security interest expressed by a written contract as*
2 *collateral for the debt owing to the bank by the customer.*

3 *(f) The limitations provided in this section do not apply when*
4 *a customer previously has authorized a bank in writing to*
5 *periodically debit a deposit account as the agreed method of*
6 *payment of the debt.*

7 *(g) The limitations provided in this section shall apply only to*
8 *the exercise by a bank a setoff with respect to debts claimed to be*
9 *owing to it by customers on or after July 1, 1976.*

10 *(h) Nothing in this section shall prejudice a person’s right to*
11 *assert exemptions under Chapter 4 (commencing with Section*
12 *703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil*
13 *Procedure, or to assert a claim or defense as to the validity of the*
14 *debt, in a judicial proceeding.*

15

16 *Article 2. Disclosure of Delayed Availability Policy*

17

18 *1420. As used in this article:*

19 *(a) “Depository institution” means any of the following:*

20 *(1) Any insured bank as defined in Section 3 of the Federal*
21 *Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.) or any bank*
22 *which is eligible to make application to become an insured bank*
23 *under Section 5 of the act.*

24 *(2) A mutual savings bank as defined in Section 3 of the Federal*
25 *Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.) or any bank*
26 *which is eligible to make application to become an insured bank*
27 *under Section 5 of the act.*

28 *(3) A savings bank as defined in Section 3 of the Federal Deposit*
29 *Insurance Act (12 U.S.C. Sec. 1811 et seq.) or any bank which is*
30 *eligible to make application to become an insured bank under*
31 *Section 5 of the act.*

32 *(4) An insured credit union as defined in Section 101 of the*
33 *Federal Credit Union Act (12 U.S.C. Sec. 1751 et seq.) or any*
34 *credit union which is eligible to make application to become an*
35 *insured credit union pursuant to Section 201 of that act.*

36 *(5) Any member as defined in Section 2 of the Federal Home*
37 *Loan Bank Act (12 U. S.C. Sec. 1421 et seq.).*

38 *(6) Any insured institution as defined in Section 401 of the*
39 *National Housing Act (12 U.S.C. Sec. 1701 et seq.) or any*

1 institution which is eligible to make application to become an
2 insured institution under Section 403 of that act.

3 (b) “Deposit account” means an account in a depository
4 institution on which the account holder is permitted to make
5 withdrawals from time to time in person by negotiable or
6 transferable instrument, payment orders of withdrawal, telephone
7 transfers, or other similar items for the purpose of making
8 payments or transfers to third persons or others. The term includes
9 demand deposits, negotiable order of withdrawal draft accounts,
10 savings deposits subject to automatic transfers, share draft
11 accounts, and all savings deposits and share accounts, other than
12 time deposits.

13 1421. (a) Prior to opening a deposit account a depository
14 institution shall provide a written disclosure to the potential
15 customer of its general policy with respect to when a customer
16 may withdraw funds deposited by check or similar instrument into
17 the customer’s deposit account.

18 (b) A depository institution shall furnish its customers preprinted
19 deposit slips, envelopes for automatic teller machine deposits, or
20 other individual notice bearing a conspicuous summary statement
21 of its general policy with respect to when a customer may withdraw
22 funds deposited by check or similar instrument into the customer’s
23 deposit account; and, in the case of a particular deposit by check
24 or similar instrument into a deposit account for which funds may
25 not be immediately available for withdrawal, provide specific
26 notice of the time the customer may withdraw such funds.

27 1422. For the purposes of computing the amount of interest or
28 dividends payable with respect to an interest-bearing deposit
29 account, a depository institution shall not delay beginning to
30 compute interest on funds deposited by check or similar instrument
31 to such an account beyond the date on which that depository
32 institution receives provisional credit for the check or similar
33 instrument. However, the payment of interest with respect to funds
34 deposited by check or similar instrument which is returned unpaid
35 shall not be required.

36 1423. Except as otherwise provided in this section, any
37 depository institution which fails to comply with any requirement
38 imposed pursuant to this article shall be liable to the aggrieved
39 party in an amount equal to the sum of any actual damage
40 sustained by the person as a result of the failure; and, in the case

1 of an individual action an additional amount as the court may
2 allow, except that the amount shall not be less than fifty dollars
3 (\$50) or greater than five hundred dollars (\$500); or, in the case
4 of a class action, such amount as the court may allow, except that
5 as to each member of the class no minimum recovery shall be
6 applicable, and the total recovery in any class action or series of
7 class actions arising out of the same failure to comply by the same
8 depository institution shall not be more than the lesser of five
9 hundred thousand dollars (\$500,000) or 1 percentum of the net
10 worth of the depository institution; and, in the case of any
11 successful action to enforce the foregoing liability, the costs of the
12 action, together with a reasonable attorney's fee as determined
13 by the court.

14 In determining the amount of award in any class action, the
15 court shall consider, among other relevant factors, the amount of
16 any actual damages awarded, the frequency and persistence of
17 failures of compliance, the resources of the depository institution,
18 the number of persons adversely affected, and the extent to which
19 the failure of compliance was intentional.

20 A depository institution may not be held liable in any action
21 brought under this section for a violation of this article if the
22 violation was not intentional and resulted from a bona fide error
23 notwithstanding the maintenance of procedures reasonably adapted
24 to avoid any such error. Examples of a bona fide error include,
25 but are not limited to, clerical, calculation, computer malfunction
26 and programming, and printing errors. An error of legal judgment
27 with respect to a person's obligations under this article shall not
28 constitute a bona fide error.

29 Any action under this section may be brought in any court of
30 competent jurisdiction, within one year from the date of the
31 occurrence of the violation.

32 No provision of this section imposing any liability shall apply
33 to any act done or omitted in good faith in conformity with any
34 rule, regulation, or interpretation thereof by the Federal Reserve
35 Board or in conformity with any interpretation or approval by an
36 official or employee of the Federal Reserve System duly authorized
37 by the board to issue interpretations or approvals under such
38 procedures as the board may prescribe therefor, notwithstanding
39 that after any act or omission has occurred, the rule, regulation,

1 *interpretation, or approval is amended, rescinded, or determined*
2 *by judicial or other authority to be invalid for any reason.*

3 *1424. The commissioner shall issue administrative regulations*
4 *to define a reasonable time for permitting customers to draw on*
5 *items received for deposit in the customer's account. It is the public*
6 *policy of this state to provide retail banking customers with the*
7 *right to withdraw against items deposited with any depository*
8 *institution located in this state within a reasonable period of time.*

9 *1425. Pursuant to Section 1424, the commissioner shall*
10 *promulgate regulations which shall be reviewed annually to*
11 *establish a reasonable period of time within which a depository*
12 *institution must permit a customer to draw as a matter of right on*
13 *an item which has been received for deposit in the customer's*
14 *account.*

15 *In determining what constitutes a reasonable period of time the*
16 *commissioner shall consider the following factors:*

17 *(a) The actual time for processing and transport between the*
18 *depository and payer institutions.*

19 *(b) The fastest air transport time between depository and payer*
20 *institutions to be used for purposes of setting the reasonable time*
21 *for transport.*

22 *(c) The most expeditious route and means for processing of*
23 *returned items.*

24 *1426. The commissioner is authorized to gather from depository*
25 *institutions such information as may be necessary for the*
26 *formulation and promulgation of the regulations required by*
27 *Section 1424.*

28 *1427. The first regulations issued pursuant to this article shall*
29 *be issued on or before July 1, 1984.*

30 *1428. The commissioner is authorized to issue regulations*
31 *which provide for a different period of time for withdrawal as a*
32 *matter of right against deposited items, if there has been a*
33 *determination that the application of the regulations adopted*
34 *pursuant to this article would result in unsafe or unsound practices*
35 *by a depository institution subject to the regulatory jurisdiction*
36 *of the commissioner.*

37 *1429. (a) Funds deposited in an account at a depository*
38 *institution shall be available on the second business day after the*
39 *business day on which those funds are deposited in the case of a*

1 cashier's check, certified check, teller's check, or depository check
2 subject to the following:

3 (1) The check is endorsed only by the person to whom it was
4 issued.

5 (2) The check is deposited in a receiving depository institution
6 that is staffed by individuals employed by that institution.

7 (3) The check is deposited with a special deposit slip that
8 indicates it is a cashier's check, certified check, teller's check, or
9 depository check, as the case may be.

10 (4) The check is deposited into an account in the name of a
11 customer that has maintained any account with the receiving
12 depository institution for a period of 60 days or more.

13 (5) The face amount of the check is for five thousand dollars
14 (\$5,000) or less.

15 In the case of funds deposited on any business day in an account
16 at a depository institution by depository checks, the aggregate
17 amount of which exceeds five thousand dollars (\$5,000), this
18 subdivision shall apply only with respect to the first five thousand
19 dollars (\$5,000) of the aggregate amount.

20 (b) Subdivision (a) does not apply to a depository check if the
21 receiving depository institution reasonably believes that the check
22 is uncollectible from the originating depository institution. For
23 purposes of this subdivision, "reasonable cause to believe"
24 requires the existence of facts that would cause a well-grounded
25 belief in the mind of a reasonable person. These reasons shall
26 include, but not be limited to, a belief that (1) the drawer or drawee
27 of the depository check has been, or will imminently be, the subject
28 of an order for relief in bankruptcy or placed in receivership or
29 (2) the depository check may be involved in a fraud or in a scheme
30 commonly known as "kiting." In these situations, the depository
31 institution electing to proceed under this subdivision shall so notify
32 the drawer and drawee no later than the close of the next business
33 day following deposit of the depository check.

34 (c) For purposes of this section, the following terms have the
35 following meanings:

36 (1) "Account" means any demand deposit account and any
37 other similar transaction account at a depository institution.

38 (2) "Business day" means any day other than a Saturday,
39 Sunday, or legal holiday.

1 (3) “Cashier’s check” means any check that is subject to the
2 following:

3 (A) The check is drawn on a depository institution.

4 (B) The check is signed by an officer or employee of the
5 depository institution.

6 (C) The check is a direct obligation of the depository institution.

7 (4) “Certified check” means any check with respect to which a
8 depository institution certifies the following:

9 (A) That the signature on the check is genuine.

10 (B) The depository institution has set aside funds that are equal
11 to the amount of the check and will be used only to pay that check.

12 (5) “Depository check” means any cashier’s check, certified
13 check, teller’s check, and any other functionally equivalent
14 instrument, as determined by the Board of Governors of the
15 Federal Reserve System or the commissioner.

16 (6) “Depository institution” has the meaning given in clauses
17 (i) to (vi), inclusive, of Section 19(b)(1)(A) of the Federal Reserve
18 Act.

19 (7) “Teller’s check” means any check issued by a depository
20 institution and drawn on another depository institution.

21 (d) Except for the specific circumstances and checks described
22 in this section, this section is not intended to restrict or preempt
23 the regulatory authority of the commissioner.

24 (e) In the event of a suspension or modification of any similar
25 provisions in the federal Expedited Funds Availability Act, the
26 effect of this section shall be similarly suspended or modified.

27

28

Article 3. Dormant Accounts

29

30 1440. Any bank which delivers or has heretofore delivered to
31 the State Treasurer pursuant to law any unclaimed or abandoned
32 deposit shall not thereafter be liable to any person for the same
33 and any action which may be brought by any person against a
34 bank for money so delivered to the State Treasurer shall be
35 defended by the Attorney General without cost to the bank.

1 *CHAPTER 13. WITHDRAWALS AND COLLECTIONS*2
3 *Article 1. General*
4

5 1450. *Notice to any bank of an adverse claim (the person*
6 *making the adverse claim being hereinafter called “adverse*
7 *claimant”) to a deposit standing on its books to the credit of or to*
8 *personal property held for the account of any person shall be*
9 *disregarded, and the bank, notwithstanding the notice, shall honor*
10 *the checks, notes, or other instruments requiring payment of money*
11 *by or for the account of the person to whose credit the account*
12 *stands and on demand shall deliver that property to, or on the*
13 *order of, the person for whose account the property is held, without*
14 *any liability on the part of the bank; subject, however, to the*
15 *exceptions provided in subdivisions (a) and (b):*

16 (a) *If an adverse claimant delivers to the bank at the office at*
17 *which the deposit is carried or at which the property is held an*
18 *affidavit of the adverse claimant stating that of the adverse*
19 *claimant’s own knowledge the person to whose credit the deposit*
20 *stands or for whose account the property is held is a fiduciary for*
21 *the adverse claimant and that the adverse claimant has reason to*
22 *believe the fiduciary is about to misappropriate the deposit or the*
23 *property, and stating the facts on which the claim of fiduciary*
24 *relationship and the belief are founded, the bank shall refuse*
25 *payment of the deposit and shall refuse to deliver the property for*
26 *a period of not more than three court days (including the day of*
27 *delivery) from the date that the bank received the adverse*
28 *claimant’s affidavit, without liability on its part and without*
29 *liability for the sufficiency or truth of the facts alleged in the*
30 *affidavit.*

31 (b) *If at any time, either before, after, or in the absence of the*
32 *filing of an affidavit by the adverse claimant, the adverse claimant*
33 *procures and serves upon the bank at the office at which the deposit*
34 *is carried or at which the property is held a restraining order,*
35 *injunction, or other appropriate order against the bank from a*
36 *court of competent jurisdiction in an action in which the adverse*
37 *claimant and all persons in whose names the deposit stands or for*
38 *whose account the property is held are parties, the bank shall*
39 *comply with the order or injunction, without liability on its part.*

1 (c) *This section shall be applicable even though the name of the*
2 *person appearing on the bank's books to whose credit the deposit*
3 *stands or for whose account the property is held is modified by a*
4 *qualifying or descriptive term such as "agent," "trustee," or other*
5 *word or phrase indicating that the person may not be the owner*
6 *in his or her own right of the deposit or property.*

7 (d) *Nothing in the California Multiple-Party Accounts Law*
8 *contained in Part 2 (commencing with Section 5100) of Division*
9 *5 of the Probate Code limits the applicability of this section.*

10 1451. *When the depositor of a commercial or savings account*
11 *has authorized any person to make withdrawals from the account,*
12 *the bank, in the absence of written notice otherwise, may assume*
13 *that any check, receipt, or order of withdrawal drawn by such*
14 *person in the authorized form or manner, including checks drawn*
15 *to his personal order and withdrawal orders payable to him*
16 *personally, was drawn for a purpose authorized by the depositor*
17 *and within the scope of the authority conferred upon such person.*

18 1452. *A bank need not recognize or give any effect to (1) any*
19 *claim to a deposit of cash or securities standing on its books to*
20 *the credit of, or held by it for the account of, any corporation, firm*
21 *or association in occupied territory or (2) any advice, statute,*
22 *rule or regulation purporting to cancel or to give notice of the*
23 *cancellation of the authority of any person at the time appearing*
24 *on the books of such bank as authorized to withdraw or otherwise*
25 *dispose of cash or securities of such corporation, firm or*
26 *association, unless such bank is required so to do by appropriate*
27 *process procured against it in a court of competent jurisdiction*
28 *in the United States in a cause therein instituted by or in the name*
29 *of such corporation, firm or association, or unless the person*
30 *making such claim or giving such advice or invoking such statute,*
31 *rule or regulation, as the case may be, shall execute to such bank,*
32 *in form and with sureties acceptable to it, a bond indemnifying it*
33 *from any and all liability, loss, damage, costs and expenses for*
34 *and on account of recognizing or giving any effect to such claim,*
35 *advice, statute, rule or regulation.*

36 *For the purposes of this section (1) the term "occupied*
37 *territory" shall mean territory occupied by a dominant authority*
38 *asserting governmental, military or police powers of any kind in*
39 *such territory, but not recognized by the United States as the de*
40 *jure government of such territory, and (2) the term "corporation,*

1 *firm or association in occupied territory” shall mean a*
 2 *corporation, firm or association which has, or at any time has*
 3 *had, a place of business in territory which has at any time been*
 4 *occupied territory.*

5 *The provisions of this section shall be effective only in cases*
 6 *where (1) such claim or advice purports or appears to have been*
 7 *sent from or is reasonably believed to have been sent pursuant to*
 8 *orders originating in, such occupied territory during the period*
 9 *of occupation, or (2) such statute, rule or regulation appears to*
 10 *have emanated from such dominant authority and purports to be*
 11 *or to have been in force in such occupied territory during the*
 12 *period of occupation.*

13 *This section applies to claims, advices, statutes, rules or*
 14 *regulations given or invoked either before or after the effective*
 15 *date of this section.*

16

17

Article 2. Certified Checks

18

19 *1455. Whenever a bank certifies a check, the amount thereof*
 20 *shall be immediately charged against the account of the drawer.*

21 *1456. It shall be unlawful for any officer or employee of a bank*
 22 *to certify any check drawn upon such bank, unless the drawer has*
 23 *on deposit with the bank, at the time such check is certified, an*
 24 *amount to his credit on the books of the bank not less than the*
 25 *amount specified therein.*

26 *Any bank officer or employee who wilfully violates the provisions*
 27 *of this section or who resorts to any device or receives any fictitious*
 28 *obligations directly or indirectly in order to evade the provisions*
 29 *of this section is guilty of a felony.*

30

31

CHAPTER 14. LOANS AND INVESTMENTS

32

33

Article 1. General Provisions

34

35 *1460. A commercial bank shall not rediscount, borrow money,*
 36 *or hypothecate its assets as security for money borrowed except*
 37 *to the extent and upon the conditions set forth in this division.*

38 *1461. Assets hypothecated by a commercial bank as security*
 39 *for moneys borrowed shall not exceed in value the amount*

1 *borrowed by more than 50 percent except with the prior written*
2 *consent of the commissioner.*

3 *1462. A commercial bank may borrow money by discounting*
4 *or otherwise, and may borrow money secured by real property*
5 *owned by the bank, to an amount not in excess of its shareholders'*
6 *equity, but shall not borrow money except as provided in Sections*
7 *1464 and 1465 in excess of such amount without the prior written*
8 *approval of the commissioner.*

9 *The amounts of moneys so borrowed by a commercial bank*
10 *together with the amount of any of its deposits secured by surety*
11 *bonds shall not at any one time exceed the amount of its*
12 *shareholders' equity without the prior written approval of the*
13 *commissioner.*

14 *1463. A commercial bank may hypothecate its assets in any*
15 *manner provided by law to secure the deposits of moneys of the*
16 *United States, of postal savings funds, of estates in bankruptcy*
17 *cases, of the State of California, or of any political subdivision,*
18 *public corporation, or district of the State of California. With the*
19 *prior approval of the commissioner a bank may hypothecate its*
20 *assets to secure moneys payable to other states.*

21 *1464. A commercial bank may borrow for the purpose of buying*
22 *from the United States, United States bonds, United States Treasury*
23 *certificates, or notes or other obligations of the United States.*

24 *1465. A commercial bank may rediscount with, borrow money*
25 *from, or hypothecate its assets as security for money borrowed*
26 *from a Federal Reserve bank, the Federal Deposit Insurance*
27 *Corporation, or the Federal Home Loan Bank.*

28 *1466. A commercial bank may issue negotiable certificates of*
29 *deposit transferable by endorsement and delivery and*
30 *nonnegotiable certificates transferable only on the books of the*
31 *bank.*

32 *1467. A commercial bank located in a place the population of*
33 *which does not exceed 5,000 persons according to the most recent*
34 *official federal or state census may act as agent for any fire, life,*
35 *or other insurance company authorized to do business in California*
36 *by soliciting and selling insurance and collecting premiums and*
37 *may receive for such services such fees and commissions as may*
38 *be agreed upon with the insurance company if the bank is engaged*
39 *in such business on October 1, 1949, and is duly licensed under*
40 *the Insurance Code, and may act also as the broker or agent for*

1 *others in making or procuring loans on real property located*
 2 *within 100 miles of the place in which the bank is located and may*
 3 *receive for such services a fee or a commission if it is engaged in*
 4 *such business on October 1, 1949, and is duly licensed. In engaging*
 5 *in either of such businesses the bank shall comply with all rules*
 6 *and regulations of the commissioner relating thereto and shall not*
 7 *guarantee either the principal or interest of any loan procured by*
 8 *it as broker or agent or assume or guarantee the payment of any*
 9 *premium on insurance policies written through it as agent or*
 10 *broker or guarantee the truth of any statement made by an insured*
 11 *in filing an application for insurance.*

12

13 *Article 2. Loan and Investment Limitations*

14

15 *1470. (a) In this article and in Article 4 (commencing with*
 16 *Section 1710) of Chapter 19, “affiliate,” when used with respect*
 17 *to a specified person, means any person controlling, controlled*
 18 *by, or under common control with, the specified person, directly*
 19 *or indirectly, through one or more intermediaries.*

20 *(b) “Control” has the meaning set forth in Section 1250.*

21 *(c) “Regulated corporation” means any corporation or limited*
 22 *liability company or similar entity in which a bank makes an equity*
 23 *investment and which the bank controls.*

24 *(d) “Securities issued by a person” means any debt, equity, or*
 25 *other security issued by a person, and any and all affiliates of that*
 26 *person, issued for the benefit of that person or for the benefit of*
 27 *an affiliate of that person.*

28 *1471. (a) Subject to the limitations and exceptions in Sections*
 29 *1481 and 1510, a bank may hold both obligations made by a*
 30 *person, and securities issued by that same person.*

31 *(b) The total amount of obligations and securities held by a*
 32 *bank pursuant to subdivision (a) shall not exceed 25 percent of*
 33 *the sum of the shareholders’ equity, allowance for loan and lease*
 34 *losses, capital notes and debentures of the bank.*

35 *1472. Subject to prior approval by the commissioner and to*
 36 *any limitations the commissioner may impose, the limitations in*
 37 *Sections 1471, 1481, and 1510 shall not apply to loans made by*
 38 *a bank to, and the bank’s investments in securities of, its regulated*
 39 *corporations.*

1 1473. Sections 1481 and 1510 shall not apply to investments
2 held by a bank prior to the operative date of this section. All
3 authorizations regarding investments by a bank issued by the
4 commissioner prior to the operative date of this section are
5 terminated.

6
7 Article 3. Loan Limits

8
9 1480. For the purpose of this article:

10 (a) “Obligations” means the total sums for the payment of which
11 a person is obligated, primarily or secondarily, to a commercial
12 bank.

13 (b) Obligations of a person include obligations of others to a
14 commercial bank arising out of loans made by the bank for the
15 benefit of the person.

16 (c) Obligations of an individual include the obligations of a
17 partnership or association for which obligations the individual is
18 liable.

19 (d) Obligations of a partnership include the obligations of its
20 members who are liable for its obligations.

21 (e) Obligations of a corporation include the obligations of all
22 subsidiaries in which it owns or controls a majority interest, except
23 to the extent and under such restrictions as the commissioner may
24 prescribe in specific instances upon special application made by
25 any bank prior to the creation of the obligations.

26 (f) Obligations of a sovereign government or agency include
27 the obligations of instrumentalities or political subdivisions of the
28 government or agency, except to the extent and under such
29 restrictions as the commissioner may prescribe in specific instances
30 upon special application made by any bank prior to the creation
31 of the obligations.

32 (g) Obligations of a limited liability company include the
33 obligations of all subsidiaries in which it owns or controls a
34 majority interest, except to the extent and under any restrictions
35 the commissioner may prescribe in specific instances upon special
36 application made by any bank prior to the creation of the
37 obligations.

38 1481. The obligations, as defined in Section 1480, excepting
39 the obligations described in Section 1485 and the obligations
40 described in Section 1483, of any one person owing to a

1 commercial bank at any one time shall not exceed the following
2 limitations:

3 (a) Obligations which are unsecured shall not exceed 15 percent
4 of the sum of the shareholders' equity, allowance for loan losses,
5 capital notes, and debentures of the bank.

6 (b) Obligations, secured and unsecured, in all shall not exceed
7 25 percent of the sum of the shareholders' equity, allowance for
8 loan losses, capital notes, and debentures of the bank.

9 Obligations arising out of the discount of commercial or business
10 paper actually owned by the person negotiating the same and
11 endorsed by such person without limitation, together with the
12 secured and unsecured obligations, if any, of such person, shall
13 not exceed 40 percent of the sum of the shareholders' equity,
14 allowance for loan losses, capital notes, and debentures of the
15 bank.

16 No commercial bank shall be required, solely by reason of the
17 amendments of this article, to dispose of or reduce any loan which
18 complied with the applicable limitations of this division at the time
19 such loan was made, nor shall any such bank be prevented solely
20 by reason of the provisions of this article from renewing any such
21 loan from time to time.

22 1482. An obligation shall not be deemed secured by personal
23 property or collateral unless the personal property or collateral
24 held as security is of a kind which has not been declared ineligible
25 by the commissioner and unless it has a market value at least 15
26 percent greater than the amount of the obligations secured thereby
27 or, if the security is a bank deposit, it shall have a face value at
28 least equal to the amount of the obligations secured thereby. The
29 commissioner may by general regulation declare any particular
30 kinds or classes of personal property ineligible as security. An
31 obligation shall not be deemed secured by real property unless
32 the obligation and the lien securing the same conform to the
33 provisions of Section 1486, 1489, 1494, 1495, or 1496 or the first
34 sentence of Section 1493. Secured and unsecured loans shall be
35 represented by separate notes and shall not be combined in any
36 way within one note or notes.

37 1483. (a) In addition to the limitations contained in Section
38 1481 a commercial bank may issue letters of credit and a
39 commercial bank may accept drafts or bills of exchange drawn
40 upon it having not more than six months' sight to run, exclusive

1 of days of grace, which grow out of transactions involving the
2 importation or exportation of goods; or which grow out of
3 transactions involving the domestic shipment of goods; or which
4 are secured at the time of acceptance by a warehouse receipt or
5 other such document conveying or securing title covering readily
6 marketable staples. A commercial bank shall not accept such drafts
7 or bills in the aggregate to an amount exceeding 150 percent of
8 the sum of its shareholders' equity, allowance for loan losses,
9 capital notes, and debentures or, when authorized by the
10 commissioner, to an amount exceeding 200 percent of the sum of
11 its shareholders' equity, allowance for loan losses, capital notes,
12 and debentures. A commercial bank shall not accept such drafts
13 or bills for any one person to an amount exceeding 10 percent of
14 the sum of its shareholders' equity, allowance for loan losses,
15 capital notes, and debentures, unless the bank is and remains
16 secured by either attached documents or some other actual security
17 growing out of the same transaction as the acceptance.

18 (b) With respect to a bank which issues an acceptance, the
19 limitations contained in this section shall not apply to that portion
20 of an acceptance which is issued by such bank and which is covered
21 by a participation agreement sold to another institution.

22 1484. With the approval of the commissioner a commercial
23 bank may accept drafts or bills of exchange drawn upon it having
24 not more than three months' sight to run, exclusive of days of
25 grace, drawn by banks or bankers in foreign countries for the
26 purpose of furnishing dollar exchange as required by the usages
27 of trade in the respective countries; provided, no commercial bank
28 shall accept such drafts or bills of exchange for any one bank to
29 any amount exceeding 10 percent of the sum of the shareholders'
30 equity, allowance for loan losses, capital notes, and debentures
31 of the accepting bank unless the draft or bill of exchange is
32 accompanied by documents conveying or securing title or unless
33 the bank is secured by some other adequate security. A commercial
34 bank shall not accept such drafts or bills, whether secured or
35 unsecured, in the aggregate to an amount exceeding 50 percent
36 of the sum of its shareholders' equity, allowance for loan losses,
37 capital notes, and debentures.

38 1485. The limitations of Section 1481 shall not apply to the
39 following and the following shall not be included among the

1 obligations of a person for the purpose of applying these
2 limitations:

3 (a) Loans secured by obligations of the United States or by
4 obligations unconditionally guaranteed both as to principal and
5 interest by the United States, having a market value at least 10
6 percent in excess of the loans secured thereby.

7 (b) Loans in an amount and of a type or class previously
8 approved in writing by the commissioner that are secured by not
9 less than a like amount of obligations of the United States or by
10 obligations unconditionally guaranteed both as to principal and
11 interest by the United States.

12 (c) Loans to the extent that they are covered by guarantees or
13 by commitments to take over or to purchase without recourse made
14 by (1) any Federal Reserve bank, (2) the United States, (3) any
15 department, bureau, board, commission, agency, or establishment
16 of the United States, including any corporation wholly owned
17 directly or indirectly by the United States, or (4) any small business
18 development corporation, urban development corporation, or rural
19 development corporation incorporated pursuant to the California
20 Job Creation Law (Part 5 (commencing with Section 14000) of
21 Division 3 of Title 1 of the Corporations Code).

22 (d) Drafts or bills of exchange drawn in good faith against
23 actual existing values with negotiable bills of lading attached,
24 whether or not accepted by the drawee.

25 (e) Bankers' acceptances of other banks which are eligible for
26 rediscount with a Federal Reserve bank.

27 (f) Obligations resulting from daily clearances through any
28 clearinghouse association.

29 (g) Obligations that are fully guaranteed or fully insured or
30 covered by a commitment to fully guarantee or fully insure by the
31 Federal Housing Administrator.

32 (h) Obligations, including portions thereof, to the extent secured
33 by a segregated deposit account in the lending bank, provided a
34 security interest in the deposit has been perfected under applicable
35 law, and subject to all of the following conditions:

36 (1) Where the deposit is eligible for withdrawal before the
37 secured obligation matures, the lending bank shall establish
38 internal procedures to prevent release of the security without the
39 lending bank's prior consent.

1 (2) A deposit that is denominated and payable in a currency
2 other than that of the obligation that it secures may be eligible for
3 this exception if the currency is freely convertible to United States
4 dollars.

5 (A) This exception applies only to that portion of the obligation
6 that is covered by the United States dollar value of the deposit.

7 (B) The lending bank shall establish procedures to periodically
8 revalue foreign currency deposits to ensure that the loan or
9 extension of credit remains fully secured at all times.

10 1486. A commercial bank may lend on the security of a first
11 lien on real property or a first lien on a leasehold under a lease
12 which does not expire, or which has been extended or renewed so
13 that it does not expire, for at least 10 years beyond the maturity
14 date of the loan, if:

15 (a) The term of the loan does not exceed 10 years and the
16 amount does not exceed 60 percent of the sound market value of
17 the property or leasehold, together with the improvements located
18 on the property which are made subject to the lien, as determined
19 by proper appraisal.

20 (b) The term of the loan does not exceed 30 years, is repayable
21 in substantially equal installments not less often than monthly (or
22 a variation therefrom as may be authorized under a loan executed
23 pursuant to Section 1916.5 or 1916.8 of the Civil Code), with
24 payments commencing not later than 60 days from the date of the
25 loan or, in the case of a construction loan, commencing not later
26 than one year from the date of the loan, and the amount does not
27 exceed 90 percent of the sound market value of the property or
28 leasehold, together with the improvements located on the property
29 which are made subject to the lien, as determined by proper
30 appraisal, provided, however, the loan may exceed 90 percent of
31 the sound market value of the property or leasehold if that portion
32 of the loan which is in excess of 90 percent is guaranteed or
33 insured by a private insurer licensed by the Insurance
34 Commissioner.

35 (c) The loan is made pursuant to and in conformance with
36 regulations adopted under Section 1916.12 of the Civil Code.

37 (d) The loan is on a farm or productive agricultural lands, the
38 term does not exceed 30 years, is repayable in substantially equal
39 installments not less often than annually, and the amount does not
40 exceed 90 percent of the sound market value of the property or

1 leasehold, together with the improvements located on the property
2 which are made subject to the lien, as determined by proper
3 appraisal.

4 (e) The term of the loan does not exceed six months and the
5 amount does not exceed 85 percent of the sound market value of
6 the property or leasehold, together with the improvements located
7 on the property which are made subject to the lien, as determined
8 by proper appraisal.

9 (f) The term of the loan does not exceed 60 months, the amount
10 does not exceed 85 percent of the sound market value of the
11 property or leasehold, together with the improvements located on
12 the property which are made subject to the lien, as determined by
13 proper appraisal, and the loan is for the purpose of financing
14 building operations under a plan providing for payment of the
15 loan or providing for refinancing by loans otherwise permitted by
16 this chapter.

17 A commercial bank may make a loan without regard to the above
18 restrictions when necessary to facilitate the sale of real property
19 owned by the bank.

20 1487. (a) The provisions of any deed of trust or mortgage on
21 real property which authorize any state or nationally chartered
22 bank to accelerate the maturity date of the principal and interest
23 on any loan secured thereby or to exercise any power of sale or
24 other remedy contained in the deed of trust or mortgage, upon the
25 failure of the trustor or mortgagor to pay, at the times provided
26 under the terms of the deed of trust or mortgage, any taxes, rents,
27 assessments, or insurance premiums with respect to the real
28 property securing the loan, or upon the failure to pay any advances
29 made with respect to the deed of trust or mortgage by the state or
30 nationally chartered bank, shall be enforceable whether or not an
31 impairment of the security interest in the real property has resulted
32 from the failure of the trustor or mortgagor to pay the taxes, rents,
33 assessments, insurance premiums, or advances.

34 (b) "State or nationally chartered bank," as used in this section
35 and Section 1227.3, includes any person authorized by this state
36 to make or arrange loans secured by real property, or a holding
37 company of a state or nationally chartered bank or any successor
38 in interest.

39 1488. The provisions of any deed of trust or mortgage on real
40 property which authorize any state or nationally chartered bank

1 *to receive and control the disbursement of the proceeds of any*
2 *policy of fire, flood, or other hazard insurance respecting the real*
3 *property shall be enforceable whether or not an impairment of the*
4 *security interest in the property has resulted from the event that*
5 *caused the proceeds of the insurance policy to become payable.*

6 *1489. A commercial bank may lend on the security of a first*
7 *lien on real property or a first lien on a leasehold under a lease*
8 *which does not expire, or which has been extended or renewed so*
9 *that it does not expire, for at least 10 years beyond the maturity*
10 *date of the loan, if the criteria of any of the following subdivisions*
11 *are satisfied:*

12 *(a) The loan is fully guaranteed or insured or covered by a*
13 *commitment to guarantee or insure by the United States, the*
14 *Federal Housing Administrator, or by any other agency of the*
15 *United States which the commissioner shall have approved for the*
16 *purposes of this subdivision as an issuer of insurance or guarantees*
17 *of loans on real property, whether the proceeds of the guarantee*
18 *or insurance is payable in cash or in obligations of the United*
19 *States.*

20 *(b) The loan is fully guaranteed by the United States or any*
21 *agency thereof pursuant to the “Servicemen’s Readjustment Act*
22 *of 1944” or any act of Congress supplementary or amendatory*
23 *thereof, or, if a portion of the loan is so guaranteed, then if the*
24 *unguaranteed portion of the loan does not exceed 80 percent of*
25 *the sound market value of the property or leasehold for loan*
26 *purposes as determined by proper appraisal.*

27 *(c) The loan is one in which the Small Business Administration*
28 *cooperates through agreements to participate on an immediate or*
29 *deferred basis under the Small Business Act, as amended.*

30 *1490. A commercial bank shall not lend in the aggregate more*
31 *than 5 percent of its assets upon the security of the stock of any*
32 *one corporation or upon the security of the bonds of any one*
33 *obligor except bonds of the United States or for the payment of*
34 *which the credit of the United States is pledged, bonds of the State*
35 *of California or for the payment of which the credit of the State of*
36 *California is pledged, and bonds of any county, city and county,*
37 *city, metropolitan water district, school district, or irrigation*
38 *district of the State of California which qualify as investments for*
39 *savings banks.*

1 1491. No loan shall be made by any commercial bank upon
2 the securities of one or more corporations, the payment of which
3 loan is undertaken, in whole or in part, severally, but not jointly,
4 by two or more persons in any of the following circumstances:

5 (a) If the borrowers or underwriters are obligated absolutely
6 or contingently to purchase the securities, or any of them, collateral
7 to the loan, unless the borrowers or underwriters have paid on
8 account of the purchase of the securities an amount in cash, or its
9 equivalent, equal to at least 25 percent of the several amounts for
10 which they remain obligated in completing the purchase of the
11 securities.

12 (b) If the commercial bank making the loan is liable, directly
13 or indirectly, or contingently, for the repayment of the loan or any
14 part thereof.

15 (c) If its term, including any renewal thereof by agreement,
16 express or implied, exceeds the period of one year.

17 (d) Or to an amount under any circumstances in excess of 25
18 percent of the sum of the commercial bank's shareholders' equity,
19 allowance for loan losses, capital notes, and debentures.

20 1492. Nothing in this chapter restricts a commercial bank in
21 taking any lien on or pledge of any property as additional security
22 for a loan already made in good faith.

23 1493. A commercial bank holding a first lien on real property
24 may take, or purchase and hold, or loan upon another and
25 immediately junior lien but all such loans shall not exceed in the
26 aggregate 90 percent of the sound market value of the property
27 as determined by proper appraisal. A commercial bank may loan
28 not to exceed the face value of a deed of trust or mortgage which
29 constitutes a first lien upon real property, but in no event shall
30 any such loan exceed 90 percent of the sound market value of the
31 property covered by said mortgage or deed of trust as determined
32 by proper appraisal.

33 1494. A commercial bank may lend on the security of a first
34 security interest on stock or a membership certificate issued to a
35 tenant-stockholder or resident-member by a completed fee simple
36 cooperative housing corporation, as defined in Section 216 of the
37 U.S. Internal Revenue Code, and the assignment by way of security
38 of the borrower's interest in the proprietary lease or right of
39 tenancy in property issued by such cooperative housing

1 corporation, provided all of the real property owned by such
2 corporation is located within the state, and further provided, that:

3 (a) The term of the loan does not exceed 30 years, is repayable
4 in substantially equal installments (or such variation therefrom
5 as may be authorized under a loan executed pursuant to Section
6 1916.5 or 1916.8 of the Civil Code), not less often than monthly,
7 with payments commencing not later than 60 days from the date
8 of the loan, and the amount does not exceed 80 percent of the
9 sound market value of such certificates of stock or membership
10 certificates; and

11 (b) The proprietary lease or right of tenancy in the property
12 provides:

13 (1) That no sublease in excess of one year, amendment or
14 modification to such proprietary lease or right of tenancy in the
15 property shall be permitted or created without the lender's prior
16 written consent, and

17 (2) That in the event of the borrower's default under such loan,
18 the lender shall have the right, without the prior consent or
19 approval of the cooperative housing corporation, to sell such
20 shares or membership certificates at public or private sale
21 following at least 30 days prior written notice to the borrower and
22 to the cooperative housing corporation, at the address of the
23 premises subject to the proprietary lease or right of tenancy in the
24 property, and assign such proprietary lease or right of tenancy in
25 the property to the purchaser who shall agree as a condition of
26 such assignment to cure any defaults thereunder.

27 For all purposes of this division, such loan shall be considered
28 a secured residential real estate loan and shall be subject to rules
29 and regulations implementing the provisions of this section issued
30 by the commissioner.

31 1495. (a) A commercial bank may make amortized loans upon
32 the security of residential real property to finance the purchase
33 and installation of material or equipment designed to promote
34 energy conservation or the efficient use of energy in the residential
35 real property securing the loan, if,

36 (1) The residential real property securing the loan consists of
37 not more than four dwelling units;

38 (2) The loan is made in connection with a concurrent loan
39 authorized under Section 1486; and

1 (3) The loan is in an amount not to exceed 10 percent of the
2 loan made under the authority of Section 1486.

3 (b) A commercial bank may make additional advances, or
4 additional loans, to an existing borrower in order to finance the
5 purchase and installation of material and equipment designed to
6 promote energy conservation or the efficient use of energy in the
7 residential real property securing the loan, if,

8 (1) The residential real property securing the loan consists of
9 not more than four dwelling units; and

10 (2) The aggregate of the additional loan or advance and the
11 unpaid balance of the existing loan will not exceed that percent
12 of the appraised value of the residential real property securing
13 the loan permitted by Section 1227 immediately after the purchase
14 and installation of such material and equipment.

15 1496. For the purpose of determining whether any loan or
16 investment is secured by a first lien on real property as required
17 by any provision of this division, none of the following shall be
18 deemed a prior encumbrance unless any installment or payment
19 thereunder, other than a rental or royalty under a lease, is due
20 and delinquent:

21 (a) The lien of any tax, assessment, or bond levied or issued by
22 any state or territory of the United States or by any district,
23 political subdivision, or municipal corporation thereof, except the
24 lien of an assessment levied against a particular parcel of real
25 property and of any bond given or issued pursuant to law in lieu
26 of the payment of the assessment.

27 (b) A lien created by a contract and given to secure the payment
28 for water to be furnished under the contract for the irrigation of
29 the real property or any part thereof.

30 (c) A lease of the real property under which all rents or royalties
31 are reserved to the owner.

32 (d) The lien of a bond given or issued pursuant to law in lieu
33 of the payment of an assessment levied against a particular parcel
34 of real property and the lien of any assessment levied to pay that
35 bond, if the unpaid balance of the bond and the amount of the loan
36 or investment combined do not exceed the percentage of the sound
37 market value of the real property permitted to be so loaned or
38 invested by any provision of this division.

39 (e) A lien given to secure the payment of any assessment or
40 subscription to meet the requirements of any law of the United

1 *States in respect to any irrigation project of the United States in*
2 *any state or territory of the United States which may be levied,*
3 *made, or received by any corporation or association formed to*
4 *carry out the provisions of that law, if the unpaid balance of the*
5 *assessment or subscription and the amount of the loan or*
6 *investment combined do not exceed the percentage of the sound*
7 *market value of the real property permitted to be so loaned or*
8 *invested by any provision of this division.*

9 *1497. No loan made by any bank in excess of any limitations*
10 *contained in this division or which is made in violation of any of*
11 *the provisions of this division shall be invalid or illegal as to the*
12 *lender for that reason, nor shall any loan made to any bank in*
13 *excess of the amounts permitted by this division be invalid or illegal*
14 *as to the lender for that reason.*

15 *1498. (a) Any state-chartered bank that makes a refund*
16 *anticipation loan to a covered borrower, as defined in Section 232*
17 *of Title 32 of the Code of Federal Regulations, as published on*
18 *August 31, 2007, in Volume 72 of the Federal Register, shall*
19 *comply with the provisions of Section 670 of Public Law 109-364*
20 *and Section 232 of Title 32 of the Code of Federal Regulations,*
21 *as published on August 31, 2007, in Volume 72 of the Federal*
22 *Register pertaining to refund anticipation loans.*

23 *(b) With respect to any refund anticipation loan covered by*
24 *Section 670 of Public Law 109-364 and Section 232 of Title 32 of*
25 *the Code of Federal Regulations, as published on August 31, 2007,*
26 *in Volume 72 of the Federal Register, a person that does not market*
27 *or extend those loans to covered borrowers shall not be in violation*
28 *of Section 394 of the Military and Veterans Code.*

29
30
31

Article 4. Investments

32 *1510. The total amount invested by a bank in the securities*
33 *issued by a person shall not exceed 15 percent of the sum of the*
34 *shareholders' equity, allowance for loan and lease losses, capital*
35 *notes and debentures of the bank, except:*

36 *(a) Obligations of the United States and those for which the*
37 *faith and credit of the United States are pledged for the payment*
38 *of principal and interest.*

39 *(b) Bonds, consolidated bonds, collateral trust debentures, or*
40 *other obligations issued by the Federal Financing Bank, the United*

1 *States Postal Service, federal land banks, or federal intermediate*
2 *credit banks established under the Federal Farm Loan Act; in*
3 *debentures and consolidated debentures issued by the Central*
4 *Bank for Cooperatives and banks for cooperatives established*
5 *under the Farm Credit Act of 1933; in consolidated notes, bonds,*
6 *debentures, and other obligations issued by federal land banks,*
7 *federal intermediate credit banks, and banks for cooperatives*
8 *under the Farm Credit Act of 1971; in the bonds of any federal*
9 *home loan bank established under the Federal Home Loan Bank*
10 *Act; and in stock, bonds, debentures, participations, and other*
11 *obligations of or issued by the Student Loan Marketing Association,*
12 *the Federal National Mortgage Association, the Government*
13 *National Mortgage Association, and the Federal Home Loan*
14 *Mortgage Corporation.*

15 *(c) Obligations of the State of California and those for which*
16 *the credit of the State of California is pledged for the payment of*
17 *principal and interest.*

18 *(d) Obligations of a local agency or district of the State of*
19 *California having the power, without limit as to rate or amount,*
20 *to levy taxes to pay the principal and interest of the bonds upon*
21 *all property within its boundaries subject to taxation by the local*
22 *agency or district.*

23 *(e) Capital stock of the Federal Reserve Bank serving the district*
24 *in which the bank is located.*

25 *(f) Capital stock of a federal home loan bank in the manner*
26 *provided in the Federal Home Loan Bank Act.*

27 *(g) Capital stock of the Federal Deposit Insurance Corporation.*

28 *1511. Section 1510 shall not apply to investments made*
29 *pursuant to this section. A bank may invest in shares of an*
30 *investment company (1) registered with the Securities and*
31 *Exchange Commission pursuant to the federal Investment Company*
32 *Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) and for which the shares*
33 *are registered under the federal Securities Act of 1933 (15 U.S.C.*
34 *Sec. 77a et seq.), and (2) the portfolio of which consists solely of*
35 *the following:*

36 *(a) Debt obligations in which a bank is permitted to invest*
37 *without limitation pursuant to subdivision (a), (b), (c), or (d) of*
38 *Section 1510 and repurchase agreements fully collateralized by*
39 *those obligations.*

1 **(b) Loans of federal funds and similar loans of unsecured day(s)**
2 *funds, maturing in six months or less to institutions insured by the*
3 *Federal Deposit Insurance Corporation Federal Funds. Loans*
4 *under this subdivision are limited to transactions described in*
5 *subsection (a) or (b) of Section 32.102 of Title 12 of the Code of*
6 *Federal Regulations involving investment companies in which the*
7 *entire beneficial interest is held exclusively by depository*
8 *institutions, as permitted by Section 204.123 of Title 12 of the Code*
9 *of Federal Regulations.*

10 **(c) Cash or its equivalent.**

11 1512. *Notwithstanding Section 1510, a bank may purchase,*
12 *acquire, or hold the stock of any corporation pursuant to a plan*
13 *of reorganization approved by the commissioner by which all of*
14 *the stock of one or more banks organized under the laws of this*
15 *state shall be acquired and immediately reissued proportionately*
16 *to the stockholders of the acquiring bank*

17 1513. *If any commercial bank has made investments which it*
18 *was authorized to make at the time they were made it shall not be*
19 *required to dispose of such investments by reason of adoption of*
20 *the Banking Code, this code, or any amendments to this article.*

21 1514. *A commercial bank may organize, sponsor, operate,*
22 *control, or render investment advice to, an investment company,*
23 *or underwrite, distribute, or sell securities of any investment*
24 *company which has qualified to sell its securities in this state*
25 *pursuant to Part 2 (commencing with Section 25100) of Division*
26 *1 of Title 4 of the Corporations Code, if the officers and employees*
27 *of the bank who sell these securities meet such standards with*
28 *respect to training, experience, and sales practices as established*
29 *by the Secretary of the Business, Transportation and Housing*
30 *Agency or the secretary's designee. For the purpose of this section,*
31 *"investment company" means an investment company as defined*
32 *in the Investment Company Act of 1940 (15 U.S.C., Sec. 80a-1 et*
33 *seq.).*

34 1515. *A bank or trust company may acquire stock in settlement*
35 *or reduction of a loan or in exchange for an investment previously*
36 *made in good faith where the acquisition of the stock is necessary*
37 *in order to minimize or avoid loss arising out of the loan or*
38 *investment. The limitation in Section 1510 shall not apply to the*
39 *stock acquired in accordance with this section. Whenever any*
40 *stock that is acquired in accordance with this section can be sold*

1 *for an amount sufficient to reimburse the bank or trust company*
 2 *for all loss arising out of the loan for which the stock was security*
 3 *or arising out of the original investment by the bank or trust*
 4 *company, the bank or trust company shall sell the same or shall*
 5 *convert the stock to an investment subject to Section 1330.*

6
 7 *Article 5. Miscellaneous*
 8

9 *1520. Whenever the public administrator becomes the*
 10 *administrator of the estate of a decedent who at the time of his*
 11 *death left money on deposit with a commercial bank, the public*
 12 *administrator may allow such deposit to remain in the commercial*
 13 *bank and may deposit therein to the account of the decedent any*
 14 *moneys of said estate not required for current expenses of*
 15 *administration, and in such cases the public administrator need*
 16 *not deposit the same with the county treasurer. Moneys so*
 17 *deposited, whether by the decedent or by the public administrator,*
 18 *may be withdrawn upon the order of the public administrator*
 19 *countersigned by a judge of the superior court when required for*
 20 *the purpose of administration or otherwise.*

21 *1521. A commercial bank accepting savings deposits shall*
 22 *provide by its bylaws or by contract with its savings depositors*
 23 *the time and condition on which repayment is to be made to such*
 24 *depositors. The bank shall not waive any requirement of notice*
 25 *before payment of any savings deposit except as to all savings*
 26 *deposits.*

27 *Whenever there is any call by savings depositors for repayment*
 28 *of a greater amount than the bank may have disposable for that*
 29 *purpose, the bank must not make any new loan or investment until*
 30 *such excess call has ceased.*

31 *1522. For the purposes of any law authorizing or providing*
 32 *for the deposit of funds with a savings bank, a commercial bank*
 33 *accepting savings deposits shall be deemed a savings bank.*

34
 35 *CHAPTER 15. INDUSTRIAL BANKS*
 36

37 *Article 1. General Provisions*
 38

39 *1530. Chapter 15 (commencing with Section 1530) is a*
 40 *restatement of Division 7 (commencing with Section 18000) as*

1 that division pertains to the licensing and regulation of industrial
2 banks and to the insurance of deposits of industrial banks. Chapter
3 11 is a continuation, simplification, and recodification of the
4 licensing and regulation of deposit-taking industrial banks.

5 1531. (a) Any reference in a provision of any statute or
6 regulation of this state to banks or commercial banks includes
7 industrial banks.

8 (b) Subdivision (a) does not apply in any of the following cases:

9 (1) In case the provision or a related provision expressly
10 provides otherwise.

11 (2) In the case of any provision of Division 1.6 (commencing
12 with Section 4800) or this division.

13 1532. The Industrial Loan Account of the Financial Institutions
14 Fund is renamed to be the Industrial Bank Account.

15 1533. (a) The commissioner shall annually levy on and collect
16 from industrial banks authorized to transact industrial banking
17 business in this state, pro rata on the basis of total assets, an
18 assessment in a total amount that is sufficient in the commissioner's
19 judgment to (1) meet the expenses of the department in
20 administering laws relating to industrial banks or to the industrial
21 banking business that are not otherwise provided for and (2)
22 provide a reasonable reserve for contingencies.

23 (b) The amount of the annual assessment on any industrial bank
24 authorized to transact the industrial banking business shall be the
25 greater (1) five thousand dollars (\$5,000) or (2) the sum of the
26 products determined by multiplying (A) increments of the bank's
27 or trust company's total assets by (B) percentages of the base
28 assessment rate according to the following table:

Total Assets (In Percentage of Base Millions)	Assessment Rate
32 First \$2	100.0
33 Next \$18	50.0
34 Next \$80	12.0
35 Next \$100	6.25
36 Next \$800	6.0
37 Next \$1,000	4.0
38 Next \$4,000	3.5
39 Next \$14,000	3.0
40 Next \$20,000	2.5

1	Total Assets	
2	(In Percentage of Base Millions)	Assessment Rate
3	Excess over \$40,000	1.5

4
5 (c) (1) For purposes of the annual assessment, the total assets
6 of an industrial bank authorized to transact industrial banking
7 business shall be determined as of a date fixed by the
8 commissioner. However, if an industrial loan company is not
9 authorized to transact industrial banking business as of that date
10 but is so authorized as of the date when the annual assessment is
11 levied, its total assets for purposes of the annual assessment shall
12 be determined as of the date of the levy.

13 (2) (A) In determining for purposes of the annual assessment
14 on the total assets of industrial banks that are authorized to
15 transact industrial banking business and that have one or more
16 foreign (other state) branch offices or facilities, the assets of the
17 foreign (other state) branch offices and facilities shall be excluded
18 from total assets. However, the commissioner may order the assets
19 of foreign (other state) branch offices and facilities to be included
20 in total assets if and to the extent that it is necessary or advisable
21 in the commissioner’s judgment to (i) meet the expenses of the
22 department on account of foreign (other state) branch offices and
23 facilities that are not otherwise provided for and (ii) provide a
24 reasonable reserve for contingencies.

25 (B) If the commissioner finds that an industrial bank authorized
26 to transact industrial banking business allocated any asset to a
27 foreign (other state) branch office or facility for the purpose, in
28 whole or in part, of reducing its annual assessment, the
29 commissioner may, for purposes of calculating the annual
30 assessment on the industrial bank, reallocate the asset to the
31 industrial bank’s head office.

32 (d) The base assessment rate for each annual assessment shall
33 be fixed by the commissioner but shall not exceed two dollars and
34 twenty cents (\$2.20) per one thousand dollars (\$1,000) of total
35 assets.

36
37 Article 2. Industrial Bank Business

38
39 1540. Each industrial bank shall be an insured bank at all
40 times while it is engaged in the industrial banking business.

1 1541. *Subject to any order or regulation of the commissioner,*
2 *an industrial bank may accept deposits evidenced by a deposit*
3 *account or by certificates, that are redeemable prior to their stated*
4 *maturity, but may not accept demand deposits.*

5 1542. *In addition to other provisions of this division that are*
6 *otherwise applicable to an industrial bank, the following provisions*
7 *of this division apply to the industrial bank as if it were a*
8 *California state commercial bank:*

9 (a) *Chapter 4 (commencing with Section 1070).*

10 (b) *Chapter 5 (commencing with Section 1100).*

11 (c) *Chapter 10 (commencing with Section 1320).*

12 (d) *Chapter 11 (commencing with Section 1380).*

13 (e) *Chapter 12 (commencing with Section 1400).*

14 (f) *Chapter 13 (commencing with Section 1450).*

15 (g) *Chapter 14 (commencing with Section 1460).*

16 (h) *Chapter 16 (commencing with Section 1550).*

17 (i) *Chapter 17 (commencing with Section 1620).*

18 (j) *Chapter 5 (commencing with Section 500) of Division 1.*

19 (k) *Chapter 6 (commencing with Section 530) of Division 1.*

20 (l) *Chapter 7 (commencing with Section 550) of Division 1.*

21 (m) *Chapter 8 (commencing with Section 1280) of Division 1.*

22 (n) *Chapter 18 (commencing with Section 1660) of Division 1.*

23 (o) *Chapter 19 (commencing with Section 1670) of Division 1.*

24 (p) *Division 1.6 (commencing with Section 4800).*

25
26 *CHAPTER 16. TRUST COMPANIES*

27
28 *Article 1. General Provisions*

29
30 1550. *No corporation shall engage in the trust business unless:*

31 (a) *Its articles comply with the requirements of subdivision (b),*
32 *(d), or (e) of Section 1100; and*

33 (b) *It has received from the commissioner a certificate of*
34 *authority pursuant to Section 1042 to engage in the trust business,*
35 *or, if it is a bank, has received the authorization of the*
36 *commissioner to engage in the trust business; and*

37 (c) *It has deposited with the State Treasurer money or securities*
38 *in compliance with Article 3 (commencing with Section 1570) of*
39 *this chapter.*

1 1551. Any commercial bank or industrial bank, with the prior
2 authorization of the commissioner, may engage in the trust
3 business, if its articles comply with the requirements of subdivision
4 (b) of Section 1100. Any bank so authorized shall, in the conduct
5 of its trust business, comply with and be governed by all of the
6 provisions of this chapter, except the provisions of Section 1580.
7 An application for such authorization shall be in such form and
8 contain such information as the commissioner may require, and
9 be accompanied by a fee of one thousand dollars (\$1,000).

10 1552. No California state bank may engage in trust business
11 at a place unless the place is its head office, an authorized branch
12 office, or an authorized place of business.

13 1553. The following persons are exempt from Section 1550:

14 (a) Any natural person serving as trustee of one or more trusts
15 where at least one trustor is a family member of that trustee. For
16 purposes of this section, “family member” means any lineal
17 ancestor, lineal descendant, person having a common lineal
18 ancestor of not more than four generations distant, spouse,
19 father-in-law, mother-in-law, sister-in-law, brother-in-law,
20 stepparent, or stepchild.

21 (b) Any member of the State Bar, as specified in Section 6002
22 of the Business and Professions Code, any certified public
23 accountant, as defined in Section 5033 of the Business and
24 Professions Code, and any professional corporation of one or
25 more members of the State Bar or certified public accountants,
26 where these professionals are acting as trustee of a trust
27 established by them for their respective clients, provided that the
28 member of the State Bar, certified public accountant, or
29 professional corporation engages in no advertising for trust
30 business in this state.

31 (c) Subject to all applicable limitations and restrictions in law
32 for nonprofit corporations, any nonprofit corporation acting as
33 trustee incidental to the purposes for which it was organized.

34 (d) Any person appointed as receiver, trustee, or other fiduciary
35 by a court of competent jurisdiction acting pursuant to that
36 authority.

37 (e) Any person licensed as a professional fiduciary pursuant to
38 Chapter 6 (commencing with Section 6500) of Division 3 of the
39 Business and Professions Code.

1 1554. *In this section, “subject national banking association”*
2 *means a national banking association that (a) maintains its main*
3 *office or a branch office in this state, (b) is authorized to transact*
4 *a trust business, and (c) has complied with the requirements of*
5 *Article 3 (commencing with Section 1570) of this chapter and of*
6 *all other laws of this state relating to the deposit of securities for*
7 *the protection of court and private trusts. A subject national*
8 *banking association may engage in and conduct a trust business*
9 *and may be appointed by any court to act in any fiduciary capacity*
10 *in which a trust company is authorized to act. All acts provided*
11 *in this code to be performed by the commissioner, the State*
12 *Treasurer, or other public officials for or in respect to the deposit*
13 *of securities by trust companies, shall be performed for subject*
14 *national banking associations equally with trust companies. Every*
15 *subject national banking association shall be permitted to use the*
16 *word “trust” in its corporate name and to advertise its authority*
17 *to engage in and conduct a trust business and to advertise for and*
18 *solicit trust business in this state, notwithstanding any contrary*
19 *provision in this division or in any other law. The commissioner*
20 *shall have access to reports of examination made by the*
21 *Comptroller of the Currency insofar as they relate to the trust*
22 *department of a subject national banking association. For purposes*
23 *of Article 3 (commencing with Section 1570), the principal place*
24 *of business of a national banking association that maintains its*
25 *main office in another state of the United States and maintains a*
26 *California branch office shall be deemed to be situated in the city*
27 *where the California branch office is located or, if the national*
28 *banking association maintains California branch offices in two*
29 *or more cities, in the city with the largest population.*

30 1555. *No foreign corporation, other than a national banking*
31 *association or a foreign (other state) state bank that is authorized*
32 *to conduct a trust business in this state, shall have or exercise the*
33 *powers of a trust company nor directly or indirectly transact or*
34 *conduct in this state a trust business as defined in Section 115.*
35 *However, a foreign corporation that is authorized by its articles*
36 *to exercise trust powers may act as trustee for the following*
37 *purposes:*

38 (a) *To deliver bonds and receive payments therefor.*

39 (b) *To deliver permanent bonds in exchange for temporary*
40 *bonds of the same issue.*

1 (c) To deliver refunding bonds in exchange for those of a prior
2 issue or issues.

3 (d) To register bonds or to exchange registered bonds for
4 coupon bonds or coupon bonds for registered bonds.

5 (e) To pay interest on the bonds, and take up and cancel coupons
6 representing the interest payment.

7 (f) To redeem and cancel bonds when called for redemption or
8 to pay and cancel bonds when due.

9 (g) To certify registered bonds for the purpose of exchanging
10 registered bonds for coupon bonds.

11 A foreign corporation that is authorized by its articles to exercise
12 trust powers may be appointed and may accept appointment and
13 act as trustee under any mortgage, deed of trust, or other
14 instrument securing bonds or other obligations issued or to be
15 issued by any railroad corporation that owns a railroad operating
16 in the State of California and extending into another state.

17 A foreign corporation exercising in this state the powers
18 conferred by this section shall not establish or maintain directly
19 or indirectly any branch office or agency in this state unless it has
20 complied with all of the applicable provisions of Chapter 20
21 (commencing with Section 1750) or of Chapter 19 (commencing
22 with Section 1670).

23 1556. Pursuant to the authority contained in Section 1 of Article
24 XV of the California Constitution, the restrictions upon rates of
25 interest contained in Section 1 of Article XV of the California
26 Constitution shall not apply to any obligations of, loans made or
27 arranged by, or forbearances of, any of the following that is
28 authorized to engage in the trust business, when acting in its
29 fiduciary capacity:

30 (a) Any California state bank.

31 (b) Any national bank that maintains its main office or a branch
32 office in this state.

33 (c) Any foreign (other state) state bank that maintains a branch
34 office in this state.

35 This section creates and authorizes an exempt class of persons
36 pursuant to Section 1 of Article XV of the Constitution.

37 This section does not exempt a bank authorized to transact a
38 trust business or a subsidiary thereof from complying with all
39 other laws and regulations governing the business in which the
40 bank or subsidiary is engaged.

1 1557. *The Legislature finds and declares that it is important*
2 *to inform taxpayers that they may make voluntary contributions*
3 *to certain funds or programs, as provided on the state income tax*
4 *return. The Legislature further finds and declares that many*
5 *taxpayers remain unaware of the voluntary contribution check-offs*
6 *on the state income tax return. Therefore, it is the intent of the*
7 *Legislature to encourage all persons who prepare state income*
8 *tax returns to inform their clients in writing, prior to the completion*
9 *of any tax return, that they may make a contribution to any*
10 *voluntary contribution check-off on the state income tax return if*
11 *they so choose.*

12
13 Article 2. *Fiduciary Activities*
14

15 1560. *It is the intent of the Legislature that the provisions of*
16 *this article, insofar as they are contained in the regulations*
17 *regarding fiduciary activities of national banks (Part 9*
18 *(commencing with Section 9.1) of Title 12 of the Code of Federal*
19 *Regulations) of the Office of the Comptroller of the Currency,*
20 *conform, and be interpreted by anyone construing the provisions*
21 *of this article to so conform, to those regulations, any rule or*
22 *interpretation promulgated thereunder by the Office of the*
23 *Comptroller of the Currency, and to any interpretation issued by*
24 *an official or employee of the Office of the Comptroller of the*
25 *Currency duly authorized to issue the interpretation.*

26 1561. *For purposes of Section 1562, the following terms have*
27 *the following meanings:*

28 (a) *“Bank” means any of the following:*

29 (1) *A commercial bank, industrial bank, or trust company*
30 *incorporated under the laws of this state.*

31 (2) *A foreign (other state) bank that may establish a branch*
32 *office in this state in accordance with Article 2 (commencing with*
33 *Section 1680) of Chapter 19.*

34 (b) *“Fiduciary Regulations” means the regulations regarding*
35 *fiduciary activities of national banks promulgated by the Office*
36 *of the Comptroller of the Currency (Part 9 (commencing with*
37 *Section 9.1) of Title 12 of the Code of Federal Regulations), as*
38 *amended from time to time.*

39 (c) *“Affiliate” has the meaning set forth in Section 150 of the*
40 *Corporations Code.*

1 (d) “Applicable law” means the law of the state, another state,
2 or other jurisdiction governing a bank’s fiduciary relationships,
3 any applicable federal laws governing those relationships, or any
4 court order pertaining to those relationships.

5 (e) “Custodian under a uniform gifts to minors act” means a
6 fiduciary relationship established pursuant to the California
7 Uniform Transfers to Minors Act (Part 9 (commencing with 3900)
8 of Division 4 of the Probate Code).

9 (f) “Fiduciary account” means an account administered by a
10 bank acting in a fiduciary capacity.

11 (g) “Fiduciary capacity” means trustee, executor, administrator;
12 registrar of stocks and bonds, transfer agent, guardian, assignee,
13 receiver, or custodian under a uniform gifts to minors act;
14 investment adviser, if the bank receives a fee for its investment
15 advice; any capacity in which the bank possesses investment
16 discretion on behalf of another; or any other similar capacity.

17 (h) “Fiduciary powers” means the powers granted a bank by
18 virtue of its receipt of the authority to engage in trust business
19 from the commissioner.

20 (i) “Guardian” means the guardian or conservator, by whatever
21 name used by law, of the estate of a minor, an incompetent person,
22 an absent person, or a person over whose estate a court has taken
23 jurisdiction, other than under bankruptcy or insolvency laws.

24 (j) “Investment discretion” means, with respect to an account,
25 the sole or shared authority, whether or not that authority is
26 exercised, to determine what securities or other assets to purchase
27 or sell on behalf of that account. A bank that delegates its authority
28 over investments and a bank that receives delegated authority over
29 investments shall both be deemed to have investment discretion.

30 (k) “Trust office” means an office of a bank, other than a main
31 office, at which the bank engages in the trust business. A trust
32 office that engages in core banking business, as defined in
33 subdivision (b) of Section 1670, is considered a branch office of
34 the bank.

35 (l) “Trust representative office” means a facility as defined in
36 subdivision (c) of Section 1670.

37 1562. (a) Sections 9.4 to 9.6, inclusive, Sections 9.8 to 9.15,
38 inclusive, and Sections 9.18 to 9.101, inclusive, of the Fiduciary
39 Regulations in all of their particular, including footnotes, are

1 hereby referred to, incorporated by reference into this article, and
2 adopted.

3 (b) All references to the term “national bank” or “national
4 banks” used in the Fiduciary Regulations shall mean “bank” or
5 “banks” for purposes of this article.

6

7

Article 3. Deposits with State Treasurer

8

9 1570. Every trust company shall deposit with the State
10 Treasurer money or securities of the character described in Section
11 1572 as security for its court and private trusts as follows:

12 (a) If the trust company’s principal place of business is situated
13 in a city the population of which does not exceed 100,000 persons,
14 it shall deposit with the State Treasurer money or securities having
15 a market value of at least fifty thousand dollars (\$50,000) as
16 security for the faithful performance and execution of all court
17 trusts accepted by it, and money or securities having a market
18 value of at least fifty thousand dollars (\$50,000) as security for
19 the faithful performance and execution of all private trusts accepted
20 by it.

21 Whenever any such trust company receives trust funds or
22 property, other than real property, from court trusts accepted by
23 it to the amount of five hundred thousand dollars (\$500,000), it
24 shall forthwith give the commissioner written notice thereof, and
25 within 30 days thereafter shall make an additional deposit with
26 the State Treasurer of money or securities having a market value
27 of fifty thousand dollars (\$50,000) as security for its court trusts,
28 and money or securities having a market value of fifty thousand
29 dollars (\$50,000) as additional security for its private trusts.

30 (b) If the trust company’s principal place of business is situated
31 in a city the population of which exceeds 100,000 persons, it shall
32 deposit with the State Treasurer money or securities having a
33 market value of at least one hundred thousand dollars (\$100,000)
34 as security for the faithful performance and execution of all court
35 trusts accepted by it, and money or securities having a market
36 value of at least one hundred thousand dollars (\$100,000) as
37 security for the faithful performance and execution of all private
38 trusts accepted by it.

39 1571. Whenever any trust company receives trust funds or
40 property, other than real property, from court trusts accepted by

1 *it to the amount of one million dollars (\$1,000,000), it shall*
2 *forthwith give the commissioner written notice thereof, and within*
3 *30 days thereafter shall make an additional deposit with the State*
4 *Treasurer of money or securities having a market value of fifty*
5 *thousand dollars (\$50,000). For each additional five hundred*
6 *thousand dollars (\$500,000) of such trust funds thereafter received*
7 *by any trust company from court trusts a similar notification in*
8 *writing shall forthwith be given to the commissioner and a further*
9 *deposit of money or securities having a market value of twenty-five*
10 *thousand dollars (\$25,000) shall be made within 30 days thereafter*
11 *by such trust company with the State Treasurer until money or*
12 *securities having a market value of five hundred thousand dollars*
13 *(\$500,000) have been so deposited.*

14 *1572. Security deposited with the Treasurer by trust companies*
15 *pursuant to Section 1570 or 1571 shall consist of the following:*

16 *(a) Bonds or other interest-bearing notes or obligations of the*
17 *United States or those for which the faith and credit of the United*
18 *States are pledged for the payment of principal and interest.*

19 *(b) Bonds of the State of California or those for which the faith*
20 *and credit of the State of California are pledged for the payment*
21 *of principal and interest or in registered warrants of the State of*
22 *California.*

23 *(c) Obligations and securities of the type described in*
24 *subdivisions (a) to (g), inclusive, of Section 1510.*

25 *(d) Obligations and assets of the type described in subdivisions*
26 *(a) to (c), inclusive, of Section 1511.*

27 *(e) Loans secured by a first lien on real property and otherwise*
28 *complying with the provisions of subdivision (a) of Section 1486.*

29 *(f) Obligations issued, assumed, or guaranteed by the*
30 *International Bank for Reconstruction and Development, the*
31 *Inter-American Development Bank, the Asian Development Bank,*
32 *the International Finance Corporation, or the African Development*
33 *Bank.*

34 *1573. Such money or securities shall be approved by the*
35 *commissioner and be deposited with the Treasurer upon the written*
36 *order of the commissioner. Upon receiving any such deposit the*
37 *Treasurer shall give his or her receipt therefor and thereafter*
38 *subject to the provisions of this chapter shall hold such deposits*
39 *for the sole benefit of the beneficiaries of the class of trust business*
40 *for the security and protection of which the same were deposited.*

1 *The state is responsible for the custody and safe return of any*
2 *money or securities so deposited. The Treasurer shall deposit any*
3 *such moneys under the provisions of Sections 16370 to 16375 of*
4 *the Government Code.*

5 *1574. Securities deposited pursuant to this article may be*
6 *exchanged from time to time, with the approval of the*
7 *commissioner, for other like securities of equal market value. Upon*
8 *written request to the commissioner, any trust company shall be*
9 *entitled to withdraw from the Treasurer, from time to time, any*
10 *amount of its securities so deposited in excess of the amount it is*
11 *required to maintain on deposit in order to conform with the*
12 *requirements of this article. Upon receiving a written request for*
13 *such withdrawal or exchange, and satisfactory proof of the facts*
14 *warranting the same, the commissioner shall forthwith deliver to*
15 *the Treasurer a written order directing the withdrawal or exchange*
16 *of such securities so as to conform with the provisions of this*
17 *section. The Treasurer shall comply with such written order. So*
18 *long as the trust company so depositing such securities shall*
19 *continue solvent, it shall have the right and shall be permitted by*
20 *the Treasurer to receive the interest and dividends on any securities*
21 *deposited by it.*

22 *1575. Should any security deposited pursuant to this article*
23 *so depreciate in value as to reduce the deposit below the amount*
24 *required by this article, additional money or securities shall be*
25 *deposited promptly in amount sufficient to meet such requirements.*
26 *The commissioner may make an investigation of the value of any*
27 *security deposited pursuant to this article, at the time such security*
28 *is presented for deposit or at any time thereafter, whenever in his*
29 *judgment such investigation is necessary. The commissioner may*
30 *make such charge as may be reasonable and proper for such*
31 *investigation.*

32 *1576. When any revaluation of securities is made by the*
33 *commissioner pursuant to Section 1575, other than at the time*
34 *such securities are presented for deposit, United States Government*
35 *securities having a maturity date less than five years from the date*
36 *of such revaluation shall be valued at not less than par.*

37 *1577. The money and securities deposited pursuant to this*
38 *article shall be subject to sale and the same or the proceeds thereof*
39 *shall be subject to disposal by the State Treasurer only on the*
40 *order of a court of competent jurisdiction and for the benefit*

1 *respectively of the beneficiaries of that class of trust business for*
2 *the security and protection of which the securities were deposited.*
3 *1578. The commissioner may, pursuant to Section 329, levy a*
4 *civil penalty against any trust company that fails to comply with*
5 *this article.*

6

7

Article 4. Investments

8

9 *1580. A trust company may invest its contributed capital only*
10 *in the securities and properties in which a commercial bank is*
11 *permitted to invest its funds pursuant to Sections 800 to 819,*
12 *inclusive, and in loans on real property which commercial banks*
13 *are permitted to make pursuant to Article 3 (commencing with*
14 *Section 1480) of Chapter 14.*

15 *1581. Trust funds received by any trust company in connection*
16 *with its trust business, if invested, shall be invested as provided in*
17 *Part 4 (commencing with Section 16000) of Division 9 of the*
18 *Probate Code.*

19 *1582. (a) As used in this section:*

20 *(1) "Fund" means any investment company registered under*
21 *the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.),*
22 *as amended from time to time.*

23 *(2) "Trust" means any court trust or private trust.*

24 *(3) "Trust Law" means Division 9 (commencing with Section*
25 *15000) of the Probate Code.*

26 *(b) Within the standards established by trust law, including, but*
27 *not limited to, Division 9 (commencing with Section 15000) of the*
28 *Probate Code, a trust company acting in any capacity under a*
29 *trust may, in the exercise of its investment discretion unless the*
30 *trust instrument provides expressly to the contrary, invest and*
31 *reinvest in the securities of or other interests in any fund to which*
32 *the trust company or its affiliate is providing services including,*
33 *but not limited to, services as an investment adviser, sponsor,*
34 *distributor, custodian, agent, registrar, administrator, servicer,*
35 *or manager, and for which the trust company or its affiliate*
36 *receives compensation.*

37 *(c) Before or within 30 days after the initial investment upon*
38 *the exercise of discretionary powers authorized by subdivision (b),*
39 *the trust company, acting in any capacity under a trust, shall*
40 *furnish written notice of the exercise of the discretionary powers*

1 *and a copy of the prospectus relating to the securities to all persons*
2 *to whom the trust company is required to render statements of*
3 *account pursuant to applicable provisions of the Trust Law or to*
4 *whom the trust company regularly provides a statement of account*
5 *unless specifically waived in writing.*

6 *(d) With respect to any trust so invested, the trust company shall*
7 *disclose to all persons identified in subdivision (c), at least*
8 *annually by prospectus, statement of account, or other written*
9 *notice, a brief description of the fees or rates charged by the trust*
10 *company and its affiliates for its services as investment adviser or*
11 *investment manager to the fund.*

12 *(e) In connection with an investment or reinvestment authorized*
13 *by subdivision (b), the portion of compensation a trust company*
14 *receives from the trust reasonably attributable to investment*
15 *advisory or investment management services to the trust shall be*
16 *reduced (but not below zero) by an amount equal to compensation*
17 *that is received by the trust company or its affiliates for providing*
18 *investment advisory or investment management services to the*
19 *fund for the portion of the trust invested in the fund.*

20 *1583. Any trust company or bank authorized to engage in the*
21 *trust business holding trust funds awaiting investment or*
22 *distribution may deposit or leave on deposit such funds with any*
23 *state or national bank. Such funds shall not, however, be deposited*
24 *or left with the same corporation or association depositing or*
25 *leaving on deposit such funds or with any corporation or*
26 *association holding or owning a majority of the capital stock of*
27 *the trust company or bank making or leaving such deposit, unless*
28 *such corporation or association shall first pledge, as security for*
29 *such deposit, securities eligible for investment by savings banks*
30 *having a market value of not less than the funds so deposited. No*
31 *security shall be required with respect to any part of such deposits*
32 *which is insured under the provisions of any law of the United*
33 *States.*

34 *1584. Any trust company acting in any capacity under a court*
35 *or private trust or when acting in such capacity with one or more*
36 *persons as cofiduciary or cofiduciaries, unless the instrument*
37 *creating such trust contains a provision to the contrary, may, with*
38 *the consent of such cofiduciary or cofiduciaries cause any stock*
39 *or other securities held in any such capacity to be registered in*
40 *the name of a nominee or nominees of such trust company and any*

1 trust company when acting as depositary or custodian for the
2 trustee of any other court or private trust, unless the instrument
3 creating the trust contains a provision to the contrary, may, with
4 the consent of the trustee of such other trust, cause any stock or
5 other securities held by it in such capacity to be registered in the
6 name of a nominee or nominees of such trust company. Any such
7 trust company shall be liable for any loss occasioned by the acts
8 of any nominee of such trust company with respect to such stock
9 or other securities so registered. The records of such trust company
10 shall at all times show the ownership of any such stock or other
11 securities and of those held in bearer form. Such stock or other
12 securities and those held in bearer form shall at all times be kept
13 by such trust company separate and apart from its other assets
14 and may be kept by such trust company:

15 (a) In a manner such that all certificates representing the stock
16 or other securities from time to time constituting the assets of a
17 particular estate, trust or other fiduciary account are held separate
18 from those of all other estates, trusts or accounts; or

19 (b) In a manner such that, without certification as to ownership
20 attached, certificates representing stock or other securities of the
21 same class of the same issuer and from time to time constituting
22 assets of particular estates, trusts or other fiduciary accounts are
23 held in bulk, including, to the extent feasible, the merging of
24 certificates of small denomination into one or more certificates of
25 large denomination, provided that a trust company, when operating
26 under the method of safekeeping security certificates described in
27 this subdivision, shall be subject to such rules and regulations as,
28 in the case of state chartered institutions, the commissioner and,
29 in the case of national bank associations, the Comptroller of the
30 Currency, may from time to time issue. Such trust company shall,
31 on demand by any party to an accounting by such trust company
32 as fiduciary or on demand by the attorney for such party, certify
33 in writing the stock or other securities held by such trust company
34 as such fiduciary for such party.

35 No domestic or foreign corporation or the registrar or transfer
36 agent of any such corporation shall be liable for registering or
37 causing to be registered on the books of such corporation any
38 share or shares or other securities in the name of any nominee of
39 such trust company or for transferring or causing to be transferred
40 on the books of any such corporation any share or shares or other

1 securities theretofore registered by such corporation in the name
2 of any nominee of such trust company as herein provided when
3 the transfer is made upon the authorization of such nominee.

4 1585. (a) For purposes of this section, two or more trust
5 companies shall be deemed to be affiliated if they are members of
6 the same affiliated group, within the meaning of Section 1504 of
7 the Internal Revenue Code.

8 (b) Any trust company may establish and administer common
9 trust funds composed of property permitted by law for the
10 investment of trust funds, for the purpose of furnishing investments
11 to any one or more of the following: (1) itself, as fiduciary;
12 (2) itself and others, as cofiduciaries; (3) any affiliated trust
13 company including, without limitation, any foreign (other state)
14 affiliated trust company, as fiduciary; and (4) any affiliated trust
15 company including, without limitation, any foreign (other state)
16 affiliated trust company and others, as cofiduciaries. Any trust
17 company may as such fiduciary or cofiduciary invest funds which
18 it lawfully holds for investment in interests in common trust funds
19 administered by itself or by any affiliated trust company including,
20 without limitation, any foreign (other state) affiliated trust
21 company, if such investment is not prohibited by the instrument,
22 judgment, decree, order, or statute creating or governing such
23 fiduciary relationship, and if, in the case of cofiduciaries, the trust
24 company procures the consent of its cofiduciaries to such
25 investment.

26 (c) Each common trust fund established hereunder shall be
27 treated as an entity separate and distinct from the fiduciary
28 relationships participating therein. No fiduciary in administering
29 a participating fiduciary relationship shall be required to make
30 any apportionment or allocation between the principal and income
31 of this relationship different from that made for the common trust
32 fund. No participating fiduciary relationship, nor any person
33 having an interest in that relationship, shall have or be deemed to
34 have any ownership in any particular property of the common
35 trust fund, but each participating fiduciary relationship shall have
36 a proportionate undivided interest in the fund and its income, and
37 the ownership of all property of the common trust fund shall be in
38 the trustee of the fund.

39 (d) This section shall apply to fiduciary relationships now in
40 existence or hereafter established, whether the same be revocable

1 or irrevocable. The commissioner, at his or her direction, may
2 make an examination of any common trust fund established
3 hereunder at the times and to the extent as he or she may deem
4 advisable. The provisions of the Corporate Securities Law shall
5 not apply to the creation, administration, or termination of common
6 trust funds, nor to participation therein.

7 1586. With regard to any participation certificates heretofore
8 issued by any trust company, secured by a trust deed or mortgage,
9 the full legal title in the deed or mortgage and debt (referred to in
10 this section as “security”) shall be held by the trust company
11 issuing the certificates as trustee of an express trust, with all
12 powers necessary to extend, renew, enforce, collect, and liquidate
13 the same, acquire title to the property covered thereby either
14 through foreclosure or by voluntary conveyance; manage, lease,
15 sell (either for cash or upon deferred payments), exchange, or
16 otherwise realize upon the security or property and distribute the
17 net proceeds thereof. All sums so realized shall, as and when
18 received by such trustee, after payment of its compensation and
19 all costs, charges, and expenses, including brokers’ commissions
20 and advances for taxes and assessments, incurred or made in
21 connection with the protection, administration, and liquidation of
22 the security or property, be distributed to the trusts or persons
23 who are beneficiaries of the trust, as their interests may appear
24 therein. The rights and interests therein of any such beneficiary
25 failing to contribute on demand its or his pro rata of sums
26 advanced, expended, or required by the trust company in the
27 protection, administration, or liquidation of the trust shall be
28 subject to a lien for all sums, with legal interest thereon advanced,
29 expended, or required for any of such purposes by the trustee or
30 by any other beneficiary of the trust.

31 The trust in such security or property shall continue in the trust
32 company so long as any of the certificates are outstanding,
33 irrespective of any distribution of the certificates from the trust in
34 which the same are held.

35 The purpose of this section is to define and clarify the rights and
36 obligations of trust companies and of all persons and trusts
37 interested in participation certificates issued under any authority
38 of law.

Article 5. Miscellaneous

1
2
3 1600. A trust company has the following powers:

4 (a) It may act, or may be appointed by any court to act, in like
5 manner as an individual, as executor, administrator, guardian or
6 conservator of estates, assignee, receiver, depository, trustee,
7 custodian, or in any other fiduciary or representative capacity for
8 any purpose permitted by law, may act as transfer agent or
9 registrar of corporate stocks and bonds, may buy and sell securities
10 for the account of customers, and may accept and execute any
11 trust business permitted by any law of this or any other state or of
12 the United States to be taken, accepted, or executed by an
13 individual; and

14 (b) A trust company, upon becoming a member of the Federal
15 Reserve System, shall continue to have such powers as may then
16 or thereafter be conferred upon it by the laws of this State, subject
17 to such federal rules, regulations, and laws as may govern state
18 banks exercising trust powers or trust companies which become
19 members of the Federal Reserve System.

20 1601. For the purposes of this chapter, all trusts and other
21 business permitted to be accepted or executed by a trust company
22 are hereby classified and defined as either court trusts or private
23 trusts.

24 A “court trust” is one in which a trust company acts under
25 appointment, order, or decree of any court, as executor,
26 administrator, guardian, conservator, assignee, receiver,
27 depository, or trustee, or in which it receives on deposit money or
28 property from a public administrator, under any provision of this
29 code, or from any executor, administrator, guardian, assignee,
30 receiver, depository, or trustee, under any order or decree of any
31 court.

32 A “private trust” is every other trust, agency, fiduciary
33 relationship, or representative capacity.

34 1602. A trust company, its officers and employees, shall not
35 disclose any information to any person concerning the existence,
36 condition, management, and administration of any private trust
37 confided to it, except:

38 (a) Where such disclosure is specifically authorized by the terms
39 of the trust.

1 (b) Where such disclosure is determined by an officer of the
2 trust company to be necessary in the administration of such trust.

3 (c) Where such disclosure is required by a court of competent
4 jurisdiction or by a subpoena issued by an attorney pursuant to
5 Section 1985 of the Code of Civil Procedure.

6 (d) Where such disclosure is made to, or upon the instructions
7 of, any party executing the trust instrument.

8 (e) Where such disclosure refers to an irrevocable trust, to, or
9 upon the instructions of, any beneficiary thereunder whether or
10 not presently entitled to receive benefits therefrom.

11 (f) Where such disclosure is made to the commissioner in the
12 course of an examination.

13 1603. The commissioner shall examine the court trust business
14 of a trust company at least once every 24 months and shall examine
15 the private trust business at such times and to such extent as he
16 or she may deem necessary or advisable.

17 1604. In making the reports to the commissioner required by
18 this division, every trust company shall report, in addition to the
19 other facts called for, separately, the amount of real property and
20 the amount of personal property held by such trust company in
21 both its court trusts and in its private trusts.

22 1605. Any court having jurisdiction of any executor,
23 administrator, guardian, conservator, assignee, receiver,
24 depository, or trustee, upon the application of any such officer or
25 trustee or upon the application of any person having an interest
26 in the estate or property administered by such officer or trustee,
27 after such notice to the other parties in interest as the court may
28 direct, or without notice if all parties in interest consent thereto,
29 and after a hearing upon such application, may authorize or direct
30 such officer or trustee, whether such person has duly qualified or
31 not, to deposit any moneys then in his hands or which may come
32 into his hands thereafter, and such portion or all of the personal
33 assets of such estate as the court shall deem proper for safekeeping,
34 with any such trust company. Upon such deposit being made the
35 court shall by an order of record reduce the bond to be given, or
36 theretofore given, by such officer or trustee so as to cover only the
37 estate remaining in the hands of such officer or trustee. The money
38 and property so deposited shall thereupon and thereafter be held
39 by such trust company under the order and direction of the court.

1 *Such trust company shall not be required to give any bond or*
2 *security, except as provided in this division, in case of any deposit*
3 *of moneys or other personal assets with it under this section. Its*
4 *responsibility for the safekeeping of personal assets so deposited*
5 *with it shall be that of a bailee for hire.*

6 *1606. Securities held by a trust company by direction of any*
7 *court order issued pursuant to Section 1605 may be deposited in*
8 *a securities depository, as defined in Section 30004, which is*
9 *licensed under Section 30200 or exempted from licensing*
10 *thereunder by Section 30005 or 30006.*

11 *1607. Whenever an executor, administrator, guardian or*
12 *conservator of estates, assignee, receiver, depository, or trustee*
13 *is required to qualify by taking and subscribing an oath or to make*
14 *an affidavit, any trust company acting in any such capacity may*
15 *satisfy such requirement by the oath or affidavit of its president,*
16 *vice president, secretary, assistant secretary, manager, trust officer,*
17 *or assistant trust officer. Any such trust company shall be liable*
18 *for its failure to perform any of the duties required by law to be*
19 *performed by an individual acting in like capacity and shall be*
20 *subject to the same penalties for such failure as would be*
21 *applicable to an individual.*

22 *1608. Whenever any corporation desires to withdraw from and*
23 *discontinue doing a trust business, it shall furnish to the*
24 *commissioner satisfactory evidence of its release and discharge*
25 *from all the obligations and trusts which it has assumed or which*
26 *have been imposed on it by law. Thereupon the commissioner shall*
27 *revoke his or her certificate of authority to do a trust business,*
28 *and the State Treasurer shall return to it all of the securities*
29 *deposited by it. Thereafter such corporation shall not be permitted*
30 *to use and shall not use the word "trust" in its corporate name,*
31 *or in connection with its business.*

32 *1609. The validity or legality of any act or proceeding done*
33 *or taken by any trust company, relating to or in connection with*
34 *the administration of its court and private trusts, shall not be*
35 *affected or impaired by the neglect or failure of such trust*
36 *company, or of any officer or employee thereof, to comply with*
37 *any of the provisions of this division. All such acts and proceedings*
38 *done or taken prior to the revocation of its certificate of authority*
39 *to do a trust business by the commissioner, under the provisions*
40 *of this division, or the revocation by any court or judge thereof of*

1 *the appointment, order, or decree theretofore entered in such trust*
2 *matter, shall be as valid and effective for all purposes as if any*
3 *such neglect or failure had not occurred.*

4 *1610. Nothing in this chapter shall make it unlawful for any*
5 *person or corporation to engage in the business of receiving and*
6 *holding money in escrow or of acting as trustee under deeds of*
7 *trust given solely for the purpose of securing obligations for the*
8 *repayment of money other than corporate bonds.*

9 *1611. A bank or trust company shall not mingle trust funds*
10 *received by it with other assets of the corporation or association*
11 *and such funds shall not be used in the conduct of its business*
12 *except to the extent that such funds are deposited with the same*
13 *corporation or association in accordance with the provisions of*
14 *this division. Any officer of any bank or association who knowingly*
15 *violates or consents to the violation of this section is guilty of a*
16 *felony.*

17 *1612. Notwithstanding any other provision of law, any bank*
18 *and any trust company holding securities in a fiduciary capacity*
19 *or while engaged in a trust business, or while acting in any*
20 *capacity under a court or private trust, or while acting in that*
21 *capacity with one or more persons as cofiduciary or cofiduciaries,*
22 *unless the instrument creating the trust contains a provision to the*
23 *contrary, is authorized to deposit or arrange for the deposit of the*
24 *securities in a securities depository, as defined in Section 30004,*
25 *which is licensed under Section 30200 or exempted from licensing*
26 *thereunder by Section 30005 or 30006. When securities are so*
27 *deposited, they may be held in the custody of the securities*
28 *depository in which they are deposited or in the custody of any*
29 *other securities depository so licensed or exempted and in which*
30 *the securities depository in which the securities were deposited*
31 *maintains an account, or in the custody of any bank or trust*
32 *company with authority to accept custody of the securities, that*
33 *accepts custody of the securities on behalf of a securities*
34 *depository. The securities may be held in the name of the nominee*
35 *of the securities depository in which they are deposited, or in the*
36 *name of the nominee of any other securities depository with which*
37 *the securities depository in which they are deposited maintains an*
38 *account. The custodian of securities so deposited may merge*
39 *certificates representing securities of the same class of the same*
40 *issuer and may hold those certificates in bulk with any other*

1 securities deposited in any securities depository by any person
2 regardless of the ownership of the securities, and certificates of
3 small denomination may be merged into one or more certificates
4 of larger denomination. Any bank or trust company that deposits
5 or arranges for the deposit of the securities in a securities
6 depository shall maintain records that at all times show the
7 ownership of the deposited securities. A bank or trust company
8 depositing securities pursuant to this section shall be subject to
9 such rules and regulations as in the case of state chartered
10 institutions, the commissioner and, in the case of national banking
11 associations, the Comptroller of the Currency may from time to
12 time issue. This section shall apply to securities now held or
13 hereafter held by a bank or trust company in the above designated
14 capacities. A bank or trust company may, but shall not be required
15 to, own capital stock of a securities depository in which it deposits
16 securities pursuant to this section.

17 1613. Notwithstanding any other provision of law, any bank
18 and any trust company holding securities in a fiduciary capacity
19 or while engaged in a trust business, or while acting in any
20 capacity under a court or private trust, or while acting in that
21 capacity with one or more persons as cofiduciary or cofiduciaries,
22 unless the instrument creating the trust contains a provision to the
23 contrary, is authorized to deposit or arrange for the deposit with
24 a federal reserve bank of any such securities the principal and
25 interest of which the United States or any department, agency, or
26 instrumentality thereof has agreed to pay, or has guaranteed
27 payment, to be credited to one or more accounts on the books of
28 the federal reserve bank in the name of the bank or trust company,
29 to be designated fiduciary or safekeeping accounts, to which
30 accounts other similar securities may be credited. Any bank or
31 trust company that deposits or arranges for the deposit of securities
32 pursuant to this section shall maintain records that at all times
33 show the ownership of the securities deposited. A bank or trust
34 company depositing securities pursuant to this section shall be
35 subject to such rules and regulations as in the case of
36 state-chartered institutions, the commissioner and, in the case of
37 national banking associations, the Comptroller of the Currency,
38 may from time to time issue. Ownership of, and other interests in,
39 the securities credited to such account may be transferred by
40 entries on the books of the federal reserve bank without physical

1 *delivery of any securities. A bank or trust company acting as*
 2 *custodian for a fiduciary shall, on demand by the fiduciary, certify*
 3 *in writing to the fiduciary the securities deposited by the bank or*
 4 *trust company pursuant to this section for the account of the*
 5 *fiduciary. A fiduciary shall, on demand by any party to its*
 6 *accounting, certify in writing to that party the securities deposited*
 7 *for its account as a fiduciary pursuant to this section. This section*
 8 *shall apply to all fiduciaries and custodians for fiduciaries, acting*
 9 *on the effective date of this section or who thereafter may act*
 10 *regardless of the state of the instrument or court order by which*
 11 *they are appointed.*

12
 13 *CHAPTER 17. SAFE DEPOSIT*

14
 15 *Article 1. General Provisions*

16
 17 *1620. Notice to a bank operating a safety deposit department*
 18 *or to a company conducting a safety deposit business of an adverse*
 19 *claim (the person making the adverse claim being hereinafter in*
 20 *this section called “adverse claimant”) to any personal property*
 21 *in a safety deposit box maintained by a bank or company and*
 22 *rented to any person, or to any personal property held by the bank*
 23 *or company in safekeeping or storage for any person shall be*
 24 *disregarded, and the bank or company, notwithstanding such*
 25 *notice, shall permit access to the box to the person to whom it is*
 26 *rented or shall deliver the contents thereof to or on the order of*
 27 *the person or shall deliver the property held in storage or*
 28 *safekeeping to or on the order of the person for whom it is held,*
 29 *without any liability on the part of the bank or company; subject,*
 30 *however, to the exceptions provided in subdivisions (a) and (b) of*
 31 *this section:*

32 *(a) If an adverse claimant delivers to the bank at the office at*
 33 *which the safety deposit is maintained or the property is held his*
 34 *affidavit stating that of his own knowledge the person in whose*
 35 *name the box stands or for whom the property is held is a fiduciary*
 36 *for the adverse claimant and that he has reason to believe such*
 37 *fiduciary is about to misappropriate the contents of the box or the*
 38 *property, and stating the facts upon which such claim of fiduciary*
 39 *relationship and such belief are founded, the bank or company*
 40 *shall refuse access to the safety deposit box or refuse to deliver*

1 *the personal property for a period of not more than three (3) court*
2 *days (including the day of delivery) from the date that the bank or*
3 *company received the adverse claimant’s affidavit, without liability*
4 *on its part and without liability for the sufficiency or truth of the*
5 *facts alleged in the affidavit.*

6 *(b) If at any time, either before, after, or in the absence of the*
7 *filing of an affidavit by the adverse claimant, the adverse claimant*
8 *procures and serves upon the bank or company at the office at*
9 *which the safety deposit box is maintained or the property is held*
10 *a restraining order, injunction, or other appropriate order against*
11 *the bank or company from a court of competent jurisdiction in an*
12 *action in which the adverse claimant and all persons in whose*
13 *names said box stands or for whom the property is held are parties,*
14 *the bank or company shall comply with such order or injunction,*
15 *without liability on its part.*

16 *(c) The provisions of this section shall be applicable even though*
17 *the name of the person appearing on the bank’s or company’s*
18 *books as the renter of the box or as the depositor of the property*
19 *held in storage or safekeeping is modified by a qualifying or*
20 *descriptive term such as “agent”, “trustee”, or other word or*
21 *phrase indicating that the person may not be the owner in his own*
22 *right of the contents of the box or of the property held in storage*
23 *or safekeeping.*

24 *Before giving access to any safe-deposit box, the bank or*
25 *company may demand payment to it of all costs and expenses of*
26 *opening the safe-deposit box and all costs and expenses of*
27 *repairing any damage to the safe-deposit box caused by the*
28 *opening thereof.*

29
30 *Article 2. Remedies for Nonpayment of Rent*

31
32 *1630. Every bank conducting a safe-deposit business shall be*
33 *entitled to the special remedies set forth in this article in enforcing*
34 *the liabilities of safe-deposit box renters and of safekeeping and*
35 *storage depositors.*

36 *1631. If the rental of any safe-deposit box is not paid within*
37 *six months from the day it is due, the bank, or at any time thereafter*
38 *and while such rental remains unpaid, may mail a notice to the*
39 *person in whose name such box stands on its records stating that*
40 *if the amount due for such rental is not paid on or before a*

1 *specified day, which must be at least 30 days after the date of*
2 *mailing such notice, the bank will cause such box to be forced*
3 *open.*

4 *1632. At any time after the date specified in such notice, if the*
5 *rental for such safe-deposit box to the date of payment and the*
6 *cost of giving such notice have not been paid, the bank, in the*
7 *presence of two of its employees, one of whom shall be an officer*
8 *of the bank, may cause such box to be opened and the contents*
9 *thereof to be removed and inventoried. The inventory shall be*
10 *signed by such persons.*

11 *1633. The following persons, and no others, are entitled to*
12 *receive from the bank a copy of the inventory:*

13 *(a) An executor of the decedent's will.*

14 *(b) The administrator of the decedent's estate.*

15 *(c) The attorney for the executor or administrator.*

16 *(d) A tenant of the safe-deposit box.*

17 *(e) Any heir of the decedent or beneficiary under the decedent's*
18 *will.*

19 *(f) Any person whom the superior court having jurisdiction by*
20 *order directs should be allowed to obtain a copy of the inventory.*

21 *1634. All contents removed from a safe-deposit box pursuant*
22 *to Section 1632 shall be retained by the bank for at least two years*
23 *unless sooner delivered to or on the order of the person in whose*
24 *name such box stood on the records of the bank. The bank shall*
25 *deliver the contents of such box to or on the order of the person*
26 *in whose name such box stood on its records, upon payment to it*
27 *before such contents are sold or destroyed, of all rental due at the*
28 *time of opening the box, the cost of giving notice, the charges for*
29 *opening the box and for custody of the contents, and any other*
30 *proper charges. The bank may deliver such contents on the order*
31 *of the person in whose name such box stood on its records,*
32 *irrespective of any information disclosed by the contents indicating*
33 *ownership thereof by any other person.*

34 *1635. At any time after two years from the day when a*
35 *safe-deposit box has been opened pursuant to this article, the bank*
36 *may mail a notice to the person in whose name such box stood on*
37 *its records, stating that unless the amounts due to the bank for*
38 *rental, for the cost of mailing and publishing notice of sale, and*
39 *for its charges for opening the box and for custody of its contents,*
40 *and any other proper charges, giving the total amount thereof, are*

1 *paid, the bank will offer for sale the contents thereof at a time and*
2 *place named in such notice, which time shall be at least 30 days*
3 *after the mailing thereof. If the amounts specified in such notice*
4 *are not paid before the time of sale designated therein, the bank*
5 *may sell all or any portion of the contents of such box, other than*
6 *contents of the character described in Section 1668 and other than*
7 *bonds and other securities which at the time of sale are listed on*
8 *an established stock exchange in the United States, at public sale*
9 *at the time and place given in such notice. Notice of the time and*
10 *place of sale shall be published in a newspaper of general*
11 *circulation in the county in which the sale is to be held once at*
12 *least five days before the date of sale, or if no such newspaper is*
13 *published in the county such notice shall be posted in three public*
14 *places in the county at least five days before the date of sale. Such*
15 *notice need describe the property only in general terms and as the*
16 *unclaimed contents of a safe-deposit box. Such sale may be*
17 *postponed from time to time by public pronouncement at the time*
18 *and place of sale.*

19 *1636. Notwithstanding any of the provisions of this article, no*
20 *stocks, bonds, or other securities which, at the time of sale pursuant*
21 *to Section 1635, are listed on any established stock exchange in*
22 *the United States may be sold at public sale but may be sold at*
23 *any time thereafter through an established stock exchange.*

24 *1637. Upon the making of a sale of any securities, an officer*
25 *of the bank shall execute and attach to the securities so sold an*
26 *affidavit reciting facts showing that such securities were sold*
27 *pursuant to this article and that the provisions of this article*
28 *governing such sale have been complied with. The affidavit shall*
29 *be and constitute sufficient authority to any corporation whose*
30 *stock is so sold or to any registrar or transfer agent of such*
31 *corporation to cancel the certificates of stock so sold and to issue*
32 *a new certificate or certificates representing such stock to the*
33 *purchaser thereof, and to any registrar, trustee, or transfer agent*
34 *of registered bonds or other securities, to register any such bonds*
35 *or other securities in the name of the purchaser thereof.*

36 *1638. From the proceeds of any sale the bank shall deduct the*
37 *amount set forth in such notice and any further charges which may*
38 *have accrued since the mailing of the notice and shall record the*
39 *balance of the proceeds, if any, on its books as a liability payable*
40 *to the person in whose name the safe-deposit box was rented.*

1 1639. Any documents, letters, or other articles found in a
2 safe-deposit box opened pursuant to Section 1632, which in the
3 judgment of at least two officers of the bank have no intrinsic or
4 marketable value, need not be offered for sale. Any documents,
5 letters, and articles and any other contents which have been offered
6 for sale and for which no purchaser has been found, shall be
7 retained by the bank for not less than one year from the date when
8 the box was opened. At any time thereafter, unless sooner delivered
9 to or on the order of the person in whose name the box stood on
10 the records of the bank, the documents, letters, and articles and
11 also those contents which have been offered for sale and for which
12 no purchaser has been found, may be destroyed in the presence
13 of an officer of the bank, but if no notice of intended sale of the
14 contents of the box has been given pursuant to Section 1635, the
15 bank shall mail a notice of its intention to destroy the documents,
16 letters, and articles at least 30 days before the destruction of the
17 same to the person in whose name the box stood on the records of
18 the bank.

19 1640. If, before the effective date of this section, a bank or its
20 predecessor in interest, has caused a safe-deposit box to be opened
21 for nonpayment of rental, and the contents of such box or any part
22 thereof remain in its custody, it shall be entitled to the special
23 remedies in enforcing the liability of the former renter of such box
24 as set forth in Sections 1634 to 1639, inclusive, whether or not
25 such box was rented prior to October 1, 1949.

26 1641. Whenever a bank receives personal property for
27 safekeeping or storage as bailee and issues a receipt therefor, the
28 bank may enforce its lien as warehouseman in accordance with
29 the provisions of the Uniform Commercial Code or at its option
30 in the manner provided in Sections 1671 to 1673, inclusive, of this
31 article.

32 1642. If the amount charged by a bank for the safekeeping or
33 storage of personal property is not paid within six months from
34 the day it is due, the bank, at any time thereafter and while such
35 charges remain unpaid, may mail a notice to the person in whose
36 name the receipt was issued, giving the amount then due for such
37 safekeeping or storage and stating that unless such amount and
38 any other charges accruing to the date of payment are paid, the
39 bank will sell such personal property at a time and place named
40 therein, which time shall be at least 30 days after the mailing of

1 *such notice. If the amount specified in such notice and all other*
2 *charges of the bank and expenses of mailing and publishing notice*
3 *of sale accruing to time of payment are not paid, the bank may*
4 *sell all or any portion of such personal property at public sale at*
5 *the time and place given in such notice. Notice of the time and*
6 *place of sale shall be published once at least five days before the*
7 *date of sale in a newspaper of general circulation published in the*
8 *county in which the sale is to be held, or if no such newspaper is*
9 *published in the county such notice shall be posted in three public*
10 *places in the county at least five days before the date of sale. Such*
11 *sale may be postponed from time to time by public pronouncement*
12 *at the time and place of sale. The bank may include in the notice*
13 *required to be mailed a statement to the effect that if the amount*
14 *due at that time is not paid at least 10 days before the date set for*
15 *the sale, it may cause any container in which any of such personal*
16 *property may be, to be opened and the contents thereof to be sold*
17 *at the time and place fixed for the sale with or without such*
18 *container, or the container may be sold without the contents. If*
19 *such statement is included in the notice, the bank, at any time*
20 *within 10 days before the date fixed for the sale, may open any*
21 *such container and remove the contents in the presence of two*
22 *employees of the bank, one of whom shall be an officer thereof,*
23 *both of whom shall make and sign an inventory of the contents.*
24 *Thereafter, on the day fixed for the sale, the contents may be sold*
25 *as a whole or separately and with or without the container, or the*
26 *container may be sold without the contents.*

27 *1643. From the proceeds of the sale, the bank shall deduct all*
28 *charges as stated in the final notice, together with any further*
29 *charges that have accrued since the mailing thereof, and*
30 *reasonable expenses for notices, advertising, and sale, and shall*
31 *credit the balance of the proceeds, if any, to an account in the*
32 *name of the person in whose name the receipt for such personal*
33 *property was issued.*

34 *1644. Any documents, letters, or other articles which, in the*
35 *judgment of an officer of the bank, have no apparent intrinsic or*
36 *marketable value, need not be offered for sale. The documents,*
37 *letters, and articles and any other articles which have been offered*
38 *for sale and for which no purchaser has been found, shall be*
39 *retained by the bank for not less than one year from the date when*
40 *notice of sale was mailed. At any time thereafter, unless sooner*

1 *delivered to or on the order of the person in whose name the receipt*
2 *was issued, the documents, letters and articles may be destroyed*
3 *in the presence of an officer of the bank and of a notary public.*

4 1645. *The power conferred on a bank to sell the contents of a*
5 *safe-deposit box or personal property received for safekeeping or*
6 *storage for nonpayment of rental or other charges, includes power*
7 *to sell any bonds, stock certificates, promissory notes, choses in*
8 *action, or other securities, and any other tangible or intangible*
9 *property found in such box or in the container in which such*
10 *personal property was received for safekeeping or storage,*
11 *regardless of whether it appears from such securities or property*
12 *that the person in whose name the box stood or to whom the*
13 *safekeeping or storage receipt was issued, possesses title to any*
14 *interest in such securities or other property or power to transfer*
15 *such title or interest.*

16 1646. *A bank holding a safe-deposit box originally rented from,*
17 *or personal property against which a safekeeping or storage*
18 *receipt was issued by, a predecessor in interest, or a bank holding*
19 *the contents of such box, shall be entitled to the remedies as to*
20 *such box or the contents thereof or as to the safekeeping or storage*
21 *of such property in like manner and to the same extent as if such*
22 *box had been rented from or such safekeeping or storage of*
23 *personal property had been received by such bank in the first*
24 *instance.*

25 1647. *The provisions of this article do not preclude any other*
26 *remedy by action or otherwise now or hereafter existing for the*
27 *enforcement of the claims of a bank against the person in whose*
28 *name the safe-deposit box stood or stands, or in whose name the*
29 *safekeeping or storage receipt was issued, nor bar the right of a*
30 *bank to so recover, at its option, either the entire amount of the*
31 *debt due to it without recourse to sale of the property, if any, or*
32 *so much of the debt due to it as shall not have been paid by the*
33 *proceeds of the sale of all or any portion of the property deposited*
34 *with it.*

35 1648. *If the principal of, or interest or dividends on, any*
36 *securities that have come into the possession of any bank by reason*
37 *of action taken pursuant to this article, is due and payable at the*
38 *time such securities come into the bank's possession, or thereafter*
39 *while such securities remain in the possession of the bank, shall*
40 *become due and payable, the bank at its election may collect such*

1 *principal, interest, or dividends and from the proceeds thereof*
2 *may deduct all sums then due to it from the person to whom such*
3 *safe-deposit box was rented or to whom such safekeeping or*
4 *storage receipt was issued. The remainder of the money so*
5 *collected, if any, shall be credited by the bank to the account of*
6 *the delinquent boxholder or of the person in whose name the*
7 *safekeeping or storage receipt was issued.*

8 1649. (a) *Whenever this article requires that notice be sent to*
9 *a person, and the box stood or stands on the records of the bank*
10 *or the safekeeping or storage receipt was issued in the names of*
11 *two or more persons, notice addressed to either or to any one of*
12 *the two or more persons shall be binding upon and effective as to*
13 *the remaining person or all remaining persons, and notice*
14 *addressed to the name of any deceased individual shall be binding*
15 *upon his or her legal representatives and on his or her heirs and*
16 *legatees.*

17 (b) *Whenever this article requires that notice be published prior*
18 *to a sale, the notice shall include the name and address of the*
19 *person in whose name the safe-deposit box stood on the records*
20 *of the bank or the safekeeping or storage receipt was issued. The*
21 *names and addresses of all persons whose property is to be sold*
22 *at the same time and place may be included in a single published*
23 *notice.*

24 (c) *Whenever this article requires that an amount be credited*
25 *to the account of a person in whose name a safe-deposit box stood*
26 *on the records of the bank or a safekeeping or storage receipt was*
27 *issued, and the box stood or the receipt was issued in two or more*
28 *names, the account shall be in both or all the names, subject to*
29 *withdrawal by or upon the written order of any one or more of*
30 *those persons, or by their successors or legal representatives.*

31 (d) *Whenever this article requires that a notice shall be mailed*
32 *to the person in whose name the safe-deposit box stood on the*
33 *records of the bank or a safekeeping or storage receipt was issued,*
34 *the notice shall be deemed to have been so mailed if it is enclosed*
35 *in a sealed envelope addressed to the person in whose name the*
36 *safe-deposit box stood in the office of the bank at which the records*
37 *of the safe-deposit box rentals are kept, or to the person in whose*
38 *name the receipt was issued, as the case may be, addressed to the*
39 *person at the address or place appearing on the safe-deposit or*
40 *storage records of the office, and the envelope with postage prepaid*

1 *has been deposited by at least first-class mail in the United States*
2 *mail.*

3 *1650. Whenever an amount of safe-deposit rental, custody,*
4 *safekeeping, or other charge is to be paid or deducted pursuant*
5 *to this article, there shall be added to and paid or deducted with*
6 *said amount, the amount of any tax imposed by laws and*
7 *regulations.*

8 *1651. Any bank or trust company may receive bonds issued by*
9 *the United States Government for safekeeping, collection, or*
10 *storage, and shall receipt therefor to the depositor and shall*
11 *maintain adequate records of all transactions therewith. In every*
12 *case of such deposit the depository bank shall have the right to*
13 *return to the depositor either the identical bonds deposited by him*
14 *or other bonds of the same issue, par value, and character.*

15
16 *CHAPTER 18. INTERSTATE ACQUISITIONS*
17

18 *1660. This chapter does not apply to any of the following*
19 *transactions:*

20 *(a) An acquisition of control of a California state bank that*
21 *requires the approval of the commissioner under Chapter 7*
22 *(commencing with Section 1250).*

23 *(b) A sale or merger that requires the approval of the*
24 *commissioner under Division 1.6 (commencing with Section 4800).*

25 *1661. Each application filed with the commissioner for an*
26 *approval under this chapter shall be in the form, shall contain the*
27 *information, shall be signed in the manner, and shall, if the*
28 *commissioner requires by regulation or order, be verified in the*
29 *manner that the commissioner may by regulation or order require.*

30 *1662. The fee for filing with the commissioner an application*
31 *for an approval under this chapter is two thousand five hundred*
32 *dollars (\$2,500).*

33 *1663. (a) The definitions that are set forth in or are applicable*
34 *to Section 3(d) of the Bank Holding Company Act of 1956 (12*
35 *U.S.C. Sec. 1842(d)) apply to this section.*

36 *(b) The commissioner may approve an acquisition by a bank*
37 *holding company that is subject to Section 3(d)(2)(B) and (D)(ii)*
38 *of the Bank Holding Company Act of 1956 (12 U.S.C. Sec.*
39 *1842(d)(2)(B) and (D)(ii)) if the commissioner finds that the*

1 *acquisition is consistent with the public convenience and advantage*
2 *in this state.*

3 1664. (a) *The definitions that are set forth in or are applicable*
4 *to Section 44 of the Federal Deposit Insurance Act (12 U.S.C. Sec.*
5 *1831u) apply to this section.*

6 (b) *This section does not apply if each bank involved in an*
7 *interstate merger transaction (including each insured depository*
8 *institution that is an affiliate of the surviving, resulting, or*
9 *purchasing bank) that is organized under the laws of this state or*
10 *that maintains a branch office in this state, is an industrial loan*
11 *company (as defined in Section 4805.10).*

12 (c) *The commissioner may approve an interstate merger*
13 *transaction that is subject to Section 44(b)(2)(B) and (D)(ii) of the*
14 *Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u(b)(2)(B)*
15 *and (D)(ii)) if the commissioner finds that the transaction is*
16 *consistent with the public convenience and advantage in this state.*

17
18 *CHAPTER 19. FOREIGN (OTHER STATE) BANKS*

19
20 *Article 1. General Provisions*

21
22 1670. *In this chapter, unless the context otherwise requires:*

23 (a) *“Branch business unit” has the meaning set forth in*
24 *subdivision (a) of Section 4840.*

25 (b) *“Core banking business” means the business of receiving*
26 *deposits, paying checks, making loans, and other activities that*
27 *the commissioner may specify by order or regulation. “Core*
28 *banking business,” when used to describe the trust business,*
29 *includes receiving fiduciary assets and administering fiduciary*
30 *accounts.*

31 (c) *“Facility,” when used with respect to a foreign (other state)*
32 *bank, means an office in this state at which the bank engages in*
33 *noncore banking business but at which it does not engage in core*
34 *banking business.*

35 (d) *“Noncore banking business” means all activities permissible*
36 *for commercial banks, industrial banks, or trust companies, except*
37 *core banking business, and except those activities prohibited by*
38 *law or determined by the commissioner by regulation or order not*
39 *to be noncore banking business.*

1 (e) “Whole business unit” has the meaning set forth in
2 subdivision (g) of Section 4840.

3 1671. Each application filed with the commissioner under this
4 chapter or under any regulation or order issued under this chapter
5 shall be in the form, shall contain the information, shall be signed
6 in the manner, and shall (if the commissioner requires by
7 regulation or order) be verified in the manner that the
8 commissioner may by regulation or order require.

9 1672. (a) Each foreign (other state) bank that maintains a
10 facility or a California branch office shall file with the
11 commissioner such reports as and when the commissioner may by
12 regulation or order require.

13 (b) Each report filed with the commissioner under this chapter
14 or under any regulation or order issued under this chapter shall
15 be in the form, shall contain the information, shall be signed in
16 the manner, and shall (if the commissioner requires by regulation
17 or order) be verified in the manner that the commissioner may by
18 regulation or order require.

19 1673. Each foreign (other state) bank that maintains a facility
20 (other than a foreign (other state) national bank that maintains a
21 California branch office) and each foreign (other state) state bank
22 that maintains a California branch office shall make, keep, and
23 preserve at the facility or branch office or at another place that
24 the commissioner may by regulation or order approve, the books,
25 accounts, and other records relating to the business of the office,
26 in the form, in the manner, and for the time that the commissioner
27 may by regulation or order provide.

28 1674. Fees shall be paid to and collected by the commissioner
29 as follows:

30 (a) The fee for filing with the commissioner an application by
31 an uninsured foreign (other state) bank for approval to establish
32 a facility is two hundred fifty dollars (\$250).

33 (b) The fee for filing with the commissioner an application by
34 an uninsured foreign (other state) bank that is licensed pursuant
35 to Article 4 (commencing with Section 1710) to maintain a facility
36 for approval to relocate or to close the facility is one hundred
37 dollars (\$100).

38 (c) The fee for issuing a license pursuant to Article 4
39 (commencing with Section 3860) is twenty-five dollars (\$25).

1 (d) Each foreign (other state) state bank that on June 1 of any
2 year maintains one or more California branch offices shall pay,
3 on or before the following July 1, a fee of one thousand dollars
4 (\$1,000) per California branch office. However, the minimum fee
5 paid by a foreign (other state) state bank under this subdivision
6 shall be not less than three thousand dollars (\$3,000) and the
7 maximum fee shall be not more than fifty thousand dollars
8 (\$50,000).

9 (e) Each foreign (other state) bank that on June 1 of any year
10 maintains a facility but no California branch office shall pay, on
11 or before the following July 1, a fee of two hundred fifty dollars
12 (\$250) for each facility.

13 (f) If the commissioner makes an examination in connection
14 with a pending application, as described in subdivision (a) or (b),
15 the applicant shall pay a fee for the examination of seventy-five
16 dollars (\$75) per hour for each examiner engaged in the
17 examination plus, if in the opinion of the commissioner it is
18 necessary for any examiner engaged in the examination to travel
19 outside this state, the travel expenses of the examiner.

20 (g) If the commissioner makes an examination of a foreign (other
21 state) state bank that maintains a California branch office, the
22 bank shall pay a fee for the examination of seventy-five dollars
23 (\$75) per hour for each examiner engaged in the examination plus,
24 if in the opinion of the commissioner it is necessary for any
25 examiner engaged in the examination to travel outside this state,
26 the travel expenses of the examiner.

27 (h) If the commissioner makes an examination of a facility of
28 an uninsured foreign (other state) bank licensed under Article 4
29 (commencing with Section 1710), the bank shall pay a fee for the
30 examination of seventy-five dollars (\$75) per hour for each
31 examiner engaged in the examination plus, if in the opinion of the
32 commissioner it is necessary for any examiner engaged in the
33 examination to travel outside this state, the travel expenses of the
34 examiner.

35 (i) If the commissioner makes an examination of a facility of an
36 insured foreign (other state) bank that does not maintain a
37 California branch office, the bank shall pay a fee for the
38 examination of seventy-five dollars (\$75) per hour for each
39 examiner engaged in the examination plus, if in the opinion of the
40 commissioner it is necessary for any examiner engaged in the

1 examination to travel outside this state, the travel expenses of the
2 examiner.

3 1675. (a) Any foreign (other state) state bank is exempted from
4 the restrictions of Section 1 of Article XV of the California
5 Constitution relating to rates of interest upon the loan or
6 forbearance of any money, goods, or things in action or on
7 accounts after demand.

8 (b) This section does not exempt a foreign (other state) state
9 bank or any subsidiary from complying with all other laws and
10 regulations governing the business in which the bank or subsidiary
11 is engaged.

12 (c) This section creates and authorizes an exempt class of
13 persons pursuant to Section 1 of Article XV of the California
14 Constitution.

15 1676. (a) In this section, “subject bank” means a bank
16 organized under the laws of any territory of the United States,
17 Puerto Rico, Guam, American Samoa, the Trust Territory of the
18 Pacific Islands, the Virgin Islands, or the Northern Mariana
19 Islands.

20 (b) Nothing in this chapter, except subdivision (c), applies to a
21 subject bank that, as a foreign (other nation) bank, maintains an
22 office in this state licensed under Chapter 20 (commencing with
23 Section 1750) or a federal agency (as defined in Section 1750) or
24 federal branch (as defined in Section 1750) in this state.

25 (c) No subject bank may at the same time maintain (1) as a
26 foreign (other state) state bank, an office in this state and (2) as
27 a foreign (other nation) bank, an office in this state licensed under
28 Chapter 20 (commencing with Section 1750) or a federal agency
29 (as defined in Section 1750) or federal branch (as defined in
30 Section 1750) in this state.

31

32 Article 2. California Branch Offices

33

34 1680. No foreign (other state) state bank may transact core
35 banking business in this state except at a branch office established
36 in accordance with federal law and the law of the domicile of the
37 bank.

38 1681. Section 1680 does not prohibit:

1 (a) Any foreign (other state) state bank that does not maintain
2 a California branch office from carrying on the activities described
3 in subdivision (d) of Section 191 of the Corporations Code.

4 (b) Any foreign (other state) state bank that does not maintain
5 a California branch office from making, in this state, loans secured
6 by liens on real property located in this state.

7 (c) Any foreign (other state) state bank from having a California
8 state bank as its agent pursuant to Chapter 6.5 (commencing with
9 Section 800).

10 1682. No foreign (other state) bank may establish or maintain
11 a California branch office unless it is qualified to transact
12 intrastate business in this state under Chapter 21 (commencing
13 with Section 2100) of Division 1 of Title 1 of the Corporations
14 Code.

15 1683. No foreign (other state) bank may establish or maintain
16 a California branch office unless the bank is insured.

17 1684. (a) (1) No foreign (other state) bank may merge as the
18 surviving corporation with a California bank, except that an
19 insured foreign (other state) bank may do so in accordance with
20 federal law, the law of the domicile of the foreign (other state)
21 bank, this chapter, and Division 1.6 (commencing with Section
22 4800).

23 (2) No foreign (other state) bank may purchase the whole
24 business unit of a California bank, except that an insured foreign
25 (other state) bank may do so in accordance with federal law, the
26 law of the domicile of the foreign (other state) bank, this chapter,
27 and Division 1.6 (commencing with Section 4800).

28 (3) No foreign (other state) bank that does not already maintain
29 a California branch office may establish or maintain a California
30 branch office except in the manner described in paragraph (1) or
31 (2) and in accordance with federal law, the law of the domicile of
32 the foreign (other state) bank, and this chapter.

33 (b) This section constitutes:

34 (1) An election to permit early interstate merger transactions
35 pursuant to Section 44(a)(3) of the Federal Deposit Insurance Act
36 (12 U.S.C. Sec. 1831u(a)(3)).

37 (2) An express prohibition against interstate branching through
38 the acquisition of a branch business unit located in this state of a
39 California bank (without acquisition of the whole business unit of

1 *the California bank) pursuant to Section 44(a)(4) of the Federal*
2 *Deposit Insurance Act (12 U.S.C. Sec. 1831u(a)(4)).*

3 *(3) An express prohibition against interstate branching through*
4 *de novo establishment of California branch offices pursuant to*
5 *Section 5155 of the Revised Statutes (12 U.S.C. Sec. 36) or Section*
6 *18(d) of the Federal Deposit Insurance Act (12 U.S.C. Sec.*
7 *1828(d)).*

8 *1685. (a) No foreign (other state) bank that does not already*
9 *maintain a California branch office may:*

10 *(1) Merge as the surviving bank with a California bank pursuant*
11 *to paragraph (1) of subdivision (a) of Section 1684, unless the*
12 *California bank has been in existence for at least five years.*

13 *(2) Purchase the whole business unit of a California bank*
14 *pursuant to paragraph (2) of subdivision (a) of Section 1684 unless*
15 *the California bank has been in existence for at least five years.*

16 *(b) For purposes of this section, a California bank that is*
17 *established solely for the purpose of, and does not open for*
18 *business prior to, acquiring the whole business unit of a second*
19 *California bank through a merger or purchase is deemed to have*
20 *been in existence for the same period of time as the second*
21 *California bank.*

22 *1686. The minimum age requirement set forth in Section 1685*
23 *does not apply in any case in which the factor set forth in*
24 *subdivision (a) and any of the factors set forth in subdivision (b)*
25 *apply.*

26 *(a) The foreign (other state) bank, by itself or in concurrent*
27 *transactions with other depository corporations (as defined in*
28 *Section 4805.06), acquires the whole business unit of the California*
29 *bank or, if the California bank has been closed or placed in*
30 *conservatorship, all or substantially all of the insured deposits of*
31 *the California bank.*

32 *(b) (1) If the California bank is a national bank, one of the*
33 *following:*

34 *(A) The bank is in default or in danger of default, as defined in*
35 *Section 3(x) of the Federal Deposit Insurance Act (12 U.S.C. Sec.*
36 *1813(x)).*

37 *(B) The purchase or merger is one with respect to which the*
38 *Federal Deposit Insurance Corporation provides assistance under*
39 *Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec.*
40 *1823(c)).*

1 (2) *If the California bank is a state bank, one of the following:*

2 (A) *The commissioner has taken possession of the property and*
3 *business of the bank pursuant to Section 592.*

4 (B) *The purchase or merger is one with respect to which the*
5 *Federal Deposit Insurance Corporation provides assistance under*
6 *Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec.*
7 *1823(c)).*

8 (C) *The commissioner finds that one or more of the factors listed*
9 *in Section 592 exists and that imposing the minimum age*
10 *requirement of Section 3825 is not in the public interest.*

11 1687. (a) *In case a foreign (other state) state bank that*
12 *maintains a California branch office is a commercial bank, in*
13 *addition to other provisions of this division and Division 1*
14 *(commencing with Section 99) that are otherwise applicable to*
15 *the bank, the following provisions of this division apply to the bank*
16 *with respect to its business in this state as if the bank were a*
17 *California state commercial bank:*

18 (1) *Chapter 10 (commencing with Section 1320)*

19 (2) *Chapter 12 (commencing with Section 1400).*

20 (3) *Chapter 13 (commencing with Section 1450).*

21 (4) *Sections 1487, 1488, 1514, 1520, and 1522.*

22 (5) *Chapter 17 (commencing with Section 1620).*

23 (b) *In case a foreign (other state) state bank that maintains a*
24 *California branch office is an industrial bank, in addition to other*
25 *provisions of this division and Division 1 (commencing with Section*
26 *99) that are otherwise applicable to the bank, the provisions cited*
27 *in paragraphs (1) to (7), inclusive, of subdivision (a) and the*
28 *provisions of Chapter 15 (commencing with Section 1530) apply*
29 *to the industrial bank with respect to its business in this state as*
30 *if the bank were a California state industrial bank.*

31 (c) *In case a foreign (other state) state bank that maintains a*
32 *California branch office is authorized pursuant to the law of its*
33 *domicile to transact trust business, in addition to other provisions*
34 *of this division and Division 1 (commencing with Section 99) that*
35 *are otherwise applicable to the bank, the following provisions of*
36 *Chapter 16 (commencing with Section 1550) apply to the bank*
37 *with respect to its business in this state as if the bank were a*
38 *California state bank authorized to transact trust business:*

39 (1) *Article 3 (commencing with Section 1570). For purposes of*
40 *Article 3 (commencing with Section 1570), the bank's principal*

1 *place of business is deemed to be situated in the city in which its*
2 *California branch office is located or, if it maintains California*
3 *branch offices in two or more cities, in the city with the largest*
4 *population.*

5 *(2) Article 4 (commencing with Section 1580), except Section*
6 *1580.*

7 *(3) Article 5 (commencing with Section 1600), except Sections*
8 *1583, 1584, 1585, 1588, and 1590.*

9 *(d) Subject to the provisions of subdivision (d), in case a foreign*
10 *(other state) state bank that maintains a California branch office*
11 *is authorized pursuant to the law of its domicile to transact trust*
12 *business, the bank may engage in and conduct trust business in*
13 *this state and may be appointed by any court to act in any fiduciary*
14 *capacity in which a California state trust company is authorized*
15 *to act.*

16 *(e) No foreign (other state) state bank that maintains a*
17 *California branch office may transact at the branch office any*
18 *business that it is not authorized to transact or is prohibited from*
19 *transacting under the law of its domicile or that banks organized*
20 *under the laws of this state are not authorized to transact or are*
21 *prohibited from transacting.*

22 *(f) Whenever any provision of this chapter or of any regulation*
23 *or order issued under this chapter that is applicable to or with*
24 *respect to a foreign (other state) state bank that maintains a*
25 *California branch office is inconsistent with any provision of any*
26 *other chapter of this division, the former provision applies, and*
27 *the latter provision does not apply.*

28 *1688. Notwithstanding Section 1684, a foreign (other state)*
29 *bank that does not maintain offices in California may merge with*
30 *or purchase the whole business unit of a foreign (other state) bank*
31 *that already maintains one or more offices in California in*
32 *accordance with Section 1684 pursuant to federal law and the law*
33 *of the domicile of the surviving or purchasing bank. The surviving*
34 *or purchasing bank may retain the offices established in this state*
35 *by the disappearing or selling bank. Thereafter, the surviving or*
36 *purchasing bank may establish and maintain additional offices as*
37 *if it were the disappearing or selling bank.*

1 Article 3. *Facilities of Insured Foreign (Other State) Banks*

2
3 1700. *No provision of this article applies to an insured foreign*
4 *(other state) bank that maintains a California branch office.*

5 1701. (a) *No insured foreign (other state) bank may establish*
6 *or maintain an office in this state at which it engages in noncore*
7 *banking business unless the bank complies with this article and*
8 *applicable provisions of Article 1 (commencing with Section 1670).*

9 (b) (1) *No person may establish or maintain an office in this*
10 *state as representative of an insured foreign (other state) bank*
11 *unless the bank complies with this article and applicable provisions*
12 *of Article 1 (commencing with Section 1670).*

13 (2) *For purposes of this article, if any person establishes or*
14 *maintains an office in this state as representative of an insured*
15 *foreign (other state) bank, the insured foreign (other state) bank*
16 *is deemed to establish and maintain the office as a facility.*

17 1702. *Not less than 30 days before an insured foreign (other*
18 *state) bank establishes a facility, it shall file with the commissioner*
19 *a report and the appointment called for in Section 3843.*

20 1703. (a) *Not less than 30 days before establishing a facility,*
21 *an insured foreign (other state) bank shall file with the*
22 *commissioner, in the form that the commissioner may by regulation*
23 *or order require, an appointment irrevocably appointing the*
24 *commissioner and the commissioner's successor from time to time*
25 *in office to be the bank's attorney to receive service of any lawful*
26 *process in any noncriminal judicial or administrative proceeding*
27 *against the bank or any of its successors that arises out of the*
28 *activities in this state of the facility after the appointment has been*
29 *filed, with the same force and validity as if served personally on*
30 *the bank or its successors, as the case may be.*

31 (b) *Any insured foreign (other state) bank that maintains a*
32 *facility and that has not filed with the commissioner an appointment*
33 *pursuant to subdivision (a) is deemed by the maintenance of the*
34 *facility to have appointed the commissioner as its attorney to*
35 *receive service of any lawful process in any noncriminal judicial*
36 *or administrative proceeding against the bank or any of its*
37 *successors that arises out of the activities in this state of the facility,*
38 *with the same force and validity as if served personally on the*
39 *bank or its successor, as the case may be.*

1 (c) Service may be made on an uninsured foreign (other state)
 2 bank that has appointed or is deemed to have appointed the
 3 commissioner as its attorney for service of process by leaving a
 4 copy of the process at any office of the commissioner. However,
 5 the service is not effective unless (1) the party making the service,
 6 who may be the commissioner, forthwith sends notice of the service
 7 and a copy of the process by registered or certified mail to the
 8 bank served at the last address on file with the commissioner for
 9 any of the bank's offices in this state or at its head office, and (2)
 10 an affidavit of compliance with this subdivision by the party making
 11 the service is filed in the case on or before the return date, if any,
 12 or within any further time that the court, in the case of a judicial
 13 proceeding, or the administrative agency, in the case of an
 14 administrative proceeding, allows.

15 1704. Not less than 30 days before an insured foreign (other
 16 state) bank relocates a facility, it shall file a report with the
 17 commissioner.

18 1705. Not less than 30 days before an insured foreign (other
 19 state) bank closes a facility, it shall file a report with the
 20 commissioner.

21

22 Article 4. Facilities of Uninsured Foreign (Other State) Banks

23

24 1710. In this article, unless the context otherwise requires:

25 (a) "Controlling person," when used with respect to an
 26 uninsured foreign (other state) bank, means any person who
 27 directly or indirectly controls the bank. For purposes of this
 28 subdivision, "control" has the meaning set forth in subdivision
 29 (b) of Section 1250, and "person" has the meaning set forth in
 30 subdivision (d) of Section 1250.

31 (b) "Executive officer," when used with respect to an uninsured
 32 foreign (other state) bank or a controlling person of an uninsured
 33 foreign (other state) bank, means the chief executive officer, the
 34 chief operating officer, the chief financial officer, and any other
 35 person who participates or has authority to participate in major
 36 policymaking functions of the bank or controlling person.

37 (c) (1) "License" means a license issued under this article,
 38 authorizing an uninsured foreign (other state) bank to maintain a
 39 facility.

40 (2) "Licensed" means to be issued or to hold a license.

1 1711. (a) In this section, “act” includes (without limitation)
2 omission.

3 (b) For purposes of making findings on an application by an
4 uninsured foreign (other state) bank for approval to establish a
5 facility:

6 (1) The commissioner may, in the absence of credible evidence
7 to the contrary, presume that the directors, executive officers, and
8 any controlling person of the bank, the directors and executive
9 officers of any controlling person of the bank, and the members
10 of the proposed management of the facility are each of good
11 character and sound financial standing.

12 (2) The commissioner may find that the bank, a director,
13 executive officer, or controlling person of the bank, a director or
14 executive officer of a controlling person of the bank, or any member
15 of the proposed management of the facility is not of good character
16 if the person has done any of the following:

17 (A) Has been convicted of, or has pleaded *nolo contendere* to,
18 any crime involving an act of fraud or dishonesty.

19 (B) Has consented to or suffered a judgment in any civil action
20 based upon conduct involving an act of fraud or dishonesty.

21 (C) Has consented to or suffered the suspension or revocation
22 of any professional, occupational, or vocational license based
23 upon conduct involving an act of fraud or dishonesty.

24 (D) Has willfully made or caused to be made in any application
25 or report filed with the commissioner or in any proceeding before
26 the commissioner any statement that was at the time and in the
27 light of the circumstances under which it was made false or
28 misleading with respect to any material fact, or has willfully
29 omitted to state in any such application or report any material
30 fact that was required to be stated in the application or report.

31 (E) Has willfully committed any violation of, or has willfully
32 aided, abetted, counseled, commanded, induced, or procured the
33 violation by any other person of, any provision of this division or
34 of any regulation or order issued under this division.

35 (c) Paragraph (2) of subdivision (b) is not an exclusive list of
36 the grounds upon which the commissioner may find, for purposes
37 of making findings on an application by an uninsured foreign
38 (other state) bank for approval to establish a facility, that the bank,
39 a director, executive officer, or controlling person of the bank, a
40 director or executive officer of a controlling person of the bank,

1 *or any member of the proposed management of the facility is not*
2 *of good character.*

3 1712. (a) *No uninsured foreign (other state) bank may*
4 *establish or maintain an office in this state at which it engages in*
5 *noncore banking business unless the uninsured foreign (other*
6 *state) bank is licensed to maintain the office as a facility.*

7 (b) (1) *No person may establish or maintain an office in this*
8 *state as representative of an uninsured foreign (other state) bank*
9 *unless the uninsured foreign (other state) bank is licensed to*
10 *maintain the office as a facility.*

11 (2) *For purposes of this article, if any person establishes or*
12 *maintains an office in this state as representative of an uninsured*
13 *foreign (other state) bank, the uninsured foreign (other state) bank*
14 *is deemed to establish and maintain the office as a facility.*

15 1713. (a) *No uninsured foreign (other state) bank may*
16 *establish or maintain a facility unless the commissioner has first*
17 *approved the establishment of the office and issued a license*
18 *authorizing the bank to maintain the office.*

19 (b) *If the commissioner finds all the following with respect to*
20 *an application by an uninsured foreign (other state) bank for*
21 *approval to establish a facility, the commissioner shall approve*
22 *the application:*

23 (1) *The bank, any controlling person of the bank, the directors*
24 *and executive officers of the bank or of any controlling person of*
25 *the bank, and the proposed management of the office are each of*
26 *good character and sound financial standing.*

27 (2) *The financial history and condition of the bank are*
28 *satisfactory.*

29 (3) *The management of the bank and the proposed management*
30 *of the office are adequate.*

31 (4) *It is reasonable to believe that, if licensed to maintain the*
32 *office, the bank will operate the office in compliance with all*
33 *applicable laws, regulations, and orders.*

34 (5) *The bank's establishment and maintenance of the office will*
35 *promote the public convenience and advantage.*

36 (6) *The activities in which the bank proposes to engage at the*
37 *office are noncore banking business and do not constitute core*
38 *banking business.*

39 *If the commissioner finds otherwise, the commissioner shall deny*
40 *the application.*

1 (c) Whenever an application by an uninsured foreign (other
2 state) bank for approval to establish a facility has been approved
3 and all conditions precedent to the issuance of a license authorizing
4 the bank to maintain the office have been fulfilled, the
5 commissioner shall issue the license.

6 1714. (a) No uninsured foreign (other state) bank that is
7 licensed to maintain a facility may relocate the office unless the
8 commissioner has first approved the relocation and issued a license
9 authorizing the bank to maintain the office at the new site.

10 (b) If the commissioner finds the following with respect to an
11 application by an uninsured foreign (other state) bank for approval
12 to relocate a facility, the commissioner shall approve the
13 application:

14 (1) In case the new site of the office is in the same vicinity as
15 the old site, that the relocation of the office will not be substantially
16 detrimental to the public convenience.

17 (2) In case the new site of the office is not in the same vicinity
18 as the old site, both of the following:

19 (A) The relocation of the office from the old site will not be
20 substantially detrimental to the public convenience and advantage
21 in the area that is primarily served by the office at the old site.

22 (B) The relocation of the office to the new site will promote the
23 public convenience and advantage.

24 If the commissioner finds otherwise, the commissioner shall deny
25 the application.

26 (c) Whenever an application by an uninsured foreign (other
27 state) bank for approval to relocate a facility has been approved
28 and all conditions precedent to the issuance of a license authorizing
29 the bank to maintain the office at the new site have been fulfilled,
30 the commissioner shall issue the license.

31 (d) Promptly after an uninsured foreign (other state) bank that
32 is licensed to maintain a facility relocates the office, the bank shall
33 surrender to the commissioner the license that authorized it to
34 maintain the office at the old site.

35 1715. An uninsured foreign (other state) bank that is licensed
36 to maintain a facility may, subject to any regulations that the
37 commissioner may prescribe, engage in any noncore banking
38 business at the office but may not solicit deposits, receive deposits,
39 pay checks, make loans, or otherwise conduct core banking
40 business at the office.

1 1716. (a) (1) No uninsured foreign (other state) bank that is
2 licensed to maintain a facility may close the office unless the
3 commissioner has first approved the closing.

4 (2) Paragraph (1) does not prohibit an uninsured foreign (other
5 state) bank that is licensed to maintain a facility from closing the
6 office in accordance with Section 1717.

7 (b) If the commissioner finds, with respect to an application by
8 an uninsured foreign (other state) bank for approval to close a
9 facility, that the closing of the office will not be substantially
10 detrimental to the public convenience and advantage, the
11 commissioner shall approve the application. If the commissioner
12 finds otherwise, the commissioner shall deny the application.

13 (c) Whenever an application by an uninsured foreign (other
14 state) bank for approval to close a facility has been approved and
15 all conditions precedent to the closing have been fulfilled, the bank
16 may close the office and shall promptly thereafter surrender to the
17 commissioner the license that authorized it to maintain the office.

18 1717. (a) Any uninsured foreign (other state) bank that holds
19 a license to maintain a facility may voluntarily surrender the
20 license by filing the license and a report with the commissioner.
21 However, any uninsured foreign (other state) bank that holds
22 licenses to maintain two or more facilities may not voluntarily
23 surrender fewer than all of the licenses.

24 (b) (1) Except as provided in paragraph (2), a voluntary
25 surrender of a license is effective on the 30th day after the license
26 and the report called for in subdivision (a) are filed with the
27 commissioner, or on any earlier date that the commissioner may
28 by order specify.

29 (2) If a proceeding to revoke or suspend a license is pending
30 when the license and the report called for in subdivision (a) are
31 filed with the commissioner, or if a proceeding to revoke or suspend
32 a license or to impose conditions upon the surrender of a license
33 is instituted before the 30th day after the license and the report
34 called for in subdivision (a) are filed with the commissioner, the
35 voluntary surrender of the license is effective at the time and upon
36 the conditions that the commissioner may by order specify.

37 1718. (a) (1) No uninsured foreign (other state) bank may be
38 issued a license to maintain a facility unless it has first filed with
39 the commissioner, in the form that the commissioner may by
40 regulation or order require, an appointment irrevocably appointing

1 *the commissioner and the commissioner's successor from time to*
2 *time in office as the bank's attorney to receive service of process*
3 *in any noncriminal judicial or administrative proceeding against*
4 *the bank or any of its successors that arises out of the activities in*
5 *this state of the facility after the appointment has been filed, with*
6 *the same force and validity as if served personally on the bank or*
7 *its successors, as the case may be.*

8 (2) *Any uninsured foreign (other state) bank that maintains a*
9 *facility and that has not filed with the commissioner an appointment*
10 *pursuant to paragraph (1) is deemed by the maintenance of the*
11 *facility to have appointed the commissioner and the commissioner's*
12 *successor from time to time in office as its attorney to receive*
13 *service of any lawful process in a noncriminal judicial or*
14 *administrative proceeding against the bank or any of its successors*
15 *that arises out of the activities in this state of the facility with the*
16 *same force and validity as if served personally on the bank or its*
17 *successors, as the case may be.*

18 (b) *Service may be made on an uninsured foreign (other state)*
19 *bank that has appointed or is deemed to have appointed the*
20 *commissioner as its attorney for service of process by leaving a*
21 *copy of the process at an office of the commissioner. However, the*
22 *service is not effective unless (1) the party making the service, who*
23 *may be the commissioner, forthwith sends notice of the service*
24 *and a copy of the process by registered or certified mail to the*
25 *bank served at the last address on file with the commissioner for*
26 *any of its offices in this state or at its head office, and (2) an*
27 *affidavit of compliance with this subdivision by the party making*
28 *the service is filed in the case on or before the return date, if any,*
29 *or within any further time that the court, in the case of a judicial*
30 *proceeding, or the administrative agency, in the case of an*
31 *administrative proceeding, allows.*

32 1719. *Each uninsured foreign (other state) bank that is licensed*
33 *to maintain a facility shall assign to the office a popular name that*
34 *includes the term "facility" and that consists of a specific*
35 *designation by name or number. The bank shall post the popular*
36 *name and the name of the bank in a conspicuous place at the office.*

37 1720. *Each uninsured foreign (other state) bank that is licensed*
38 *to maintain a facility shall post its license in a conspicuous place*
39 *at the office.*

40 1721. *No license is transferable or assignable.*

1 *CHAPTER 20. FOREIGN (OTHER NATION) BANKS*2
3 *Article 1. General Provisions*4
5 *1750. In this chapter, unless the context otherwise requires:*6 *(a) “Agency” means a depository agency or a nondepository*
7 *agency.*8 *(b) “Branch office” means a limited branch office, a retail*
9 *branch office, or a wholesale branch office.*10 *(c) “Business in this state,” when used with respect to a foreign*
11 *(other nation) bank which is licensed to maintain one or more*
12 *agencies or branch offices, includes (without limitation) the*
13 *aggregate business of all the offices.*14 *(d) “Controlling person,” when used with respect to a foreign*
15 *(other nation) bank, means any person who, directly or indirectly,*
16 *controls the bank. For purposes of this subdivision, “control” has*
17 *the meaning set forth in subdivision (b) of Section 1250, and*
18 *“person” has the meaning set forth in subdivision (d) of Section*
19 *1250.*20 *(e) “Depository agency,” when used with respect to a foreign*
21 *(other nation) bank, means a place in this state at which the bank*
22 *transacts commercial banking business but at which it does not*
23 *transact the business of receiving deposits, except as permitted*
24 *under paragraph (2) of subdivision (a) of Section 1805.*25 *(f) “Executive officer,” when used with respect to a foreign*
26 *(other nation) bank or a controlling person of a foreign (other*
27 *nation) bank, means the chief executive officer, the chief operating*
28 *officer, the chief financial officer, and any other person who*
29 *participates or has authority to participate in major policy-making*
30 *functions of the bank or controlling person. “Executive officer,”*
31 *when used with respect to a foreign (other nation) bank, includes*
32 *the head of the international division (or, if there is no such*
33 *division, the closest equivalent division or unit) of such bank.*34 *(g) “Federal agency” has the meaning set forth in Section 1(b)*
35 *of the International Banking Act of 1978.*36 *(h) “Federal branch” has the meaning set forth in Section 1(b)*
37 *of the International Banking Act of 1978.*38 *(i) (1) “License” means a license issued under this chapter,*
39 *authorizing a foreign bank to maintain an office.*40 *(2) To be “licensed” means to be issued or to hold a license.*

1 (3) To be “licensed to transact business in this state,” when
2 used with respect to a foreign (other nation) bank, means that the
3 bank is licensed to maintain an agency or branch office.

4 (j) “Limited branch office,” when used with respect to a foreign
5 (other nation) bank, means a place in this state at which the bank
6 transacts commercial banking business but at which it does not
7 transact the business of receiving deposits except as permitted
8 under paragraph (3) of subdivision (a) of Section 1805.

9 (k) “Nondepository agency,” when used with respect to a foreign
10 (other nation) bank, means a place in this state at which the bank
11 transacts commercial banking business, except the business of
12 receiving deposits.

13 (l) “Office,” when used with respect to a foreign (other nation)
14 bank, means any agency, branch office, or representative office
15 of the bank.

16 (m) “Primary office,” when used with respect to a foreign (other
17 nation) bank that is licensed to maintain a single agency or branch
18 office, means the agency or branch office and, when used with
19 respect to a foreign (other nation) bank that is licensed to maintain
20 two or more agencies or branch offices, means that one of the
21 offices which the bank has designated as its primary office in
22 accordance with Section 1766.

23 (n) “Representative office,” when used with respect to a foreign
24 (other nation) bank, means an office in this state at which the bank
25 engages in representational functions but at which it does not
26 transact commercial banking business.

27 (o) “Retail branch office,” when used with respect to a foreign
28 (other nation) bank, means a place in this state at which the bank
29 transacts commercial banking business, including (without
30 limitation) the business of receiving deposits.

31 (p) “Wholesale branch office,” when used with respect to a
32 foreign (other nation) bank, means a place in this state at which
33 the bank transacts commercial banking business but at which it
34 does not transact the business of receiving deposits except as
35 permitted under paragraph (4) of subdivision (a) of Section 1805.

36 1751. Nothing in this chapter, except Section 1760, applies to
37 a federal agency or branch in this state.

38 1752. (a) In this section, “subject bank” means a bank
39 organized under the laws of any territory of the United States,
40 Puerto Rico, Guam, American Samoa, the Trust Territory of the

1 *Pacific Islands, the Virgin Islands, or the Northern Mariana*
2 *Islands.*

3 *(b) Nothing in this chapter, except subdivision (c), shall apply*
4 *to a subject bank that maintains a branch office in this state as a*
5 *foreign (other state) state bank pursuant to Chapter 19*
6 *(commencing with Section 1670), Section 13(f), 13(k), 18(d), or*
7 *44 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(f),*
8 *1823(k), 1828(d), or 1831u), or Section 9 of the Federal Reserve*
9 *Act (12 U.S.C. Sec. 321).*

10 *(c) No subject bank shall at the same time maintain (1) as a*
11 *foreign (other nation) bank, an office in this state licensed under*
12 *this chapter and (2) as a foreign (other state) state bank, a branch*
13 *office in this state pursuant to Chapter 19 (commencing with*
14 *Section 1670), Section 13(f), 13(k), 18(d), or 44 of the Federal*
15 *Deposit Insurance Act (12 U.S.C. Sec. 1823(f), 1823(k), 1828(d),*
16 *or 1831u), or Section 9 of the Federal Reserve Act (12 U.S.C. Sec.*
17 *321).*

18 *1753. For purposes of this chapter, offices of foreign (other*
19 *nation) banks are divided into classes and ranked in ascending*
20 *order, as follows:*

21 *(a) Representative office.*

22 *(b) Nondepository agency.*

23 *(c) Depository agency.*

24 *(d) Limited branch office.*

25 *(e) Wholesale branch office.*

26 *(f) Retail branch office.*

27 *1754. (a) For purposes of this chapter:*

28 *(1) Changing a lower class office into a higher class office shall*
29 *be treated as establishing the higher class office, but not as closing*
30 *the lower class office.*

31 *(2) Changing a higher class office into a lower class office shall*
32 *be treated as closing the higher class office, but not as establishing*
33 *the lower class office.*

34 *(b) In the case of changing a higher class office into a lower*
35 *class office, when the application for approval to close the higher*
36 *class office has been approved and all conditions precedent to the*
37 *closing have been fulfilled, the foreign (other nation) bank may*
38 *change the higher class office into the lower class office, and the*
39 *commissioner shall issue a license authorizing the bank to maintain*
40 *the lower class office.*

1 1755. Fees shall be paid to, and collected by, the commissioner,
2 as follows:

3 (a) The fee for filing with the commissioner an application by
4 a foreign (other nation) bank that is not licensed to transact
5 business in this state for approval to establish a branch office shall
6 be two thousand dollars (\$2,000).

7 (b) The fee for filing with the commissioner an application by
8 a foreign (other nation) bank that is not licensed to transact
9 business in this state for approval to establish an agency shall be
10 one thousand five hundred dollars (\$1,500).

11 (c) The fee for filing with the commissioner an application by
12 a foreign (other nation) bank that is licensed to transact business
13 in this state for approval to establish a branch office shall be one
14 thousand dollars (\$1,000).

15 (d) The fee for filing with the commissioner an application by
16 a foreign (other nation) bank that is licensed to transact business
17 in this state for approval to establish an agency shall be seven
18 hundred fifty dollars (\$750).

19 (e) The fee for filing with the commissioner an application by
20 a foreign (other nation) bank for approval to establish a
21 representative office shall be two hundred fifty dollars (\$250).

22 (f) The fee for filing with the commissioner an application by a
23 foreign (other nation) bank that is licensed to maintain an agency
24 or branch office for approval to relocate or to close the office shall
25 be two hundred fifty dollars (\$250).

26 (g) The fee for filing with the commissioner an application by
27 a foreign (other nation) bank that is licensed to maintain a
28 representative office for approval to relocate or to close the
29 representative office shall be one hundred dollars (\$100).

30 (h) The fee for issuing a license shall be twenty-five dollars
31 (\$25).

32 (i) Each foreign (other nation) bank that on June 1st of any year
33 is licensed to maintain a representative office but is not licensed
34 to transact business in this state shall pay, on or before the
35 following July 1st, a fee of two hundred fifty dollars (\$250) for
36 each such representative office.

37 1756. Each application filed with the commissioner under this
38 chapter or under any regulation or order issued under this chapter
39 shall be in such form, shall contain such information, shall be
40 signed in such manner, and shall (if the commissioner so requires

1 by regulation or order) be verified in such manner, as the
2 commissioner may by regulation or order require.

3 1757. (a) In this section, “act” includes (without limitation)
4 omission.

5 (b) For purposes of making findings on an application by a
6 foreign (other nation) bank for approval to establish an office:

7 (1) The commissioner may, in the absence of credible evidence
8 to the contrary, presume that the directors, executive officers, and
9 any controlling person of the bank and the directors and executive
10 officers of any controlling person of the bank are each of good
11 character and sound financial standing.

12 (2) The commissioner may find that the bank, a director,
13 executive officer, or a controlling person of the bank, or a director
14 or executive officer of a controlling person of the bank is not of
15 good character if that person has done any of the following:

16 (A) Has been convicted of, or has pleaded *nolo contendere* to,
17 any crime involving an act of fraud or dishonesty.

18 (B) Has consented to or suffered a judgment in any civil action
19 based upon conduct involving an act of fraud or dishonesty.

20 (C) Has consented to or suffered the suspension or revocation
21 of any professional, occupational, or vocational license based
22 upon conduct involving an act of fraud or dishonesty.

23 (D) Has willfully made or caused to be made in any application
24 or report filed with the commissioner or in any proceeding before
25 the commissioner, any statement that was at the time and in the
26 light of the circumstances under which it was made false or
27 misleading with respect to any material fact, or has willfully
28 omitted to state in any application or report filed with the
29 commissioner or in any proceeding before the commissioner, any
30 material fact that was required to be stated therein.

31 (E) Has willfully committed any violation of, or has willfully
32 aided, abetted, counseled, commanded, induced, or procured the
33 violation by any other person of, any provision of this division or
34 of any regulation or order issued under this division.

35 (c) Paragraph (2) of subdivision (b) shall not be deemed to be
36 an exclusive list of the grounds upon which the commissioner may
37 find, for purposes of making findings on an application by a foreign
38 (other nation) bank for approval to establish an office, that the
39 bank, a director, executive officer, or controlling person of the

1 *bank, or a director or executive officer of a controlling person of*
2 *the bank is not of good character.*

3 *1758. (a) Each foreign (other nation) bank that is licensed to*
4 *maintain an office shall file with the commissioner reports as and*
5 *when the commissioner may, by regulation or order, require.*

6 *(b) Each report filed with the commissioner under this chapter*
7 *or under any regulation or order issued under this chapter shall*
8 *be in the form, shall contain the information, shall be signed in*
9 *the manner, and shall (if the commissioner so requires by*
10 *regulation or order) be verified in the manner, that the*
11 *commissioner may, by regulation or order, require.*

12 *1759. Each foreign (other nation) bank that is licensed to*
13 *maintain an office shall make, keep, and preserve at the office or*
14 *at another place that the commissioner may, by regulation or*
15 *order, approve, the books, accounts, and other records relating*
16 *to the business of the office, in the form, in the manner, and for*
17 *the time that the commissioner may, by regulation or order,*
18 *provide.*

19 *1760. (a) No foreign (other nation) bank which is licensed to*
20 *maintain an agency or branch office shall concurrently maintain*
21 *a federal agency or federal branch in this state.*

22 *(b) No foreign (other nation) bank which maintains a federal*
23 *agency or federal branch in this state shall concurrently be licensed*
24 *to maintain an agency or branch office in this state.*

25 *1761. (a) No foreign (other nation) bank shall concurrently*
26 *be licensed to maintain offices of different classes.*

27 *(b) Subdivision (a) does not prohibit a foreign (other nation)*
28 *bank that is licensed to maintain a representative office from being*
29 *concurrently licensed to maintain an office of a different class or*
30 *to prohibit a foreign (other nation) bank that is licensed to maintain*
31 *an office other than a representative office from being concurrently*
32 *licensed to maintain a representative office.*

33 *1762. (a) (1) No foreign (other nation) bank (other than a*
34 *bank that is licensed to maintain an agency or branch office) shall*
35 *be issued a license to maintain a representative office unless it*
36 *shall have first filed with the commissioner, in the form that the*
37 *commissioner may by regulation or order require, an appointment*
38 *irrevocably appointing the commissioner and the commissioner's*
39 *successor from time to time in office to be the bank's attorney to*
40 *receive service of any lawful process in any noncriminal judicial*

1 *or administrative proceeding against the bank or any of its*
2 *successors that arises out of the activities in this state of the*
3 *representative office after the appointment has been filed, with the*
4 *same force and validity as if served personally on the bank or its*
5 *successor, as the case may be.*

6 (2) *Any foreign (other nation) bank (other than a bank that is*
7 *licensed to maintain an agency or branch office or that maintains*
8 *a federal agency or federal branch in this state) that maintains a*
9 *representative office and that has not filed with the commissioner*
10 *an appointment pursuant to paragraph (1) shall be deemed by the*
11 *maintenance of that office to have appointed the commissioner as*
12 *its attorney to receive service of any lawful process in any*
13 *noncriminal judicial or administrative proceeding against the*
14 *bank or any of its successors that arises out of the activities in this*
15 *state of the representative office with the same force and validity*
16 *as if served personally on the bank or its successor, as the case*
17 *may be.*

18 (b) (1) *No foreign (other nation) bank shall be issued a license*
19 *to maintain an agency or branch office unless it shall have first*
20 *filed with the commissioner, in the form that the commissioner*
21 *may by regulation or order require, an appointment irrevocably*
22 *appointing the commissioner and the commissioner's successor*
23 *from time to time in office to be the bank's attorney to receive*
24 *service of any lawful process in any noncriminal judicial or*
25 *administrative proceeding against the bank or any of its successors*
26 *that arises after the appointment has been filed, with the same*
27 *force and validity as if served personally on the bank or its*
28 *successor, as the case may be.*

29 (2) *Any foreign (other nation) bank that maintains an agency*
30 *or branch office (other than a federal agency or federal branch)*
31 *and that has not filed with the commissioner an appointment*
32 *pursuant to paragraph (1) shall be deemed by the maintenance of*
33 *that office to have appointed the commissioner as its attorney to*
34 *receive service of any lawful process in any noncriminal judicial*
35 *or administrative proceeding against the bank or any of its*
36 *successors with the same force and validity as if served personally*
37 *on the bank or its successor, as the case may be.*

38 (c) *Service may be made on a foreign (other nation) bank that*
39 *has appointed or is deemed to have appointed the commissioner*
40 *as its attorney for service of process by leaving a copy of the*

1 *process at any office of the commissioner. However, the service*
2 *is not effective unless (1) the party making the service, who may*
3 *be the commissioner, forthwith sends notice of the service and a*
4 *copy of the process by registered or certified mail to the bank*
5 *served at its last address on file with the commissioner at any of*
6 *its offices in this state or at its head office, and (2) an affidavit of*
7 *compliance with this subdivision by the party making service is*
8 *filed in the case on or before the return date, if any, or within any*
9 *further time that the court, in the case of a judicial proceeding, or*
10 *the administrative agency, in the case of an administrative*
11 *proceeding, allows.*

12 *1763. No license shall be transferable or assignable.*

13 *1764. Each foreign (other nation) bank that is licensed to*
14 *maintain an office shall post its license in a conspicuous place at*
15 *the office.*

16 *1765. (a) Each foreign (other nation) bank that is licensed to*
17 *maintain an office shall assign to the office a popular name that*
18 *consists of a specific designation by name or number and shall*
19 *post the popular name and the name of the bank in a conspicuous*
20 *place at the office.*

21 *(b) The popular name that a foreign (other nation) bank assigns*
22 *to a representative office that it is licensed to maintain shall include*
23 *the term “representative office.”*

24 *(c) The popular name that a foreign (other nation) bank assigns*
25 *to an agency that it is licensed to maintain shall not include the*
26 *term “branch” unless the term is modified by the word “foreign”*
27 *or “overseas” or by a similar word.*

28 *1766. Whenever a foreign (other nation) bank is licensed to*
29 *maintain two or more agencies or branch offices, it shall designate*
30 *one of such offices as its primary office.*

31 *1767. Each foreign (other nation) bank that is licensed to*
32 *maintain an office shall conduct all of the business of the office in*
33 *a single building or in adjoining buildings. However, for good*
34 *cause and with the approval of the commissioner, the bank may*
35 *conduct part of the business of the office elsewhere in the same*
36 *vicinity.*

37 *1768. Any foreign (other nation) bank that, at the time it makes*
38 *a loan or forbearance or executes a contract therefor, has assets*
39 *equal to at least one hundred million dollars (\$100,000,000), is*
40 *licensed to maintain an office in California, is licensed or otherwise*

1 *authorized by another state of the United States to maintain an*
2 *agency or branch office in that state, or maintains a federal agency*
3 *or federal branch in any state of the United States is exempted*
4 *from the restrictions of Section 1 of Article XV of the Constitution*
5 *relating to rates of interest upon the loan or forbearance of any*
6 *money, goods, or things in action or on accounts after demand.*

7 *This section does not exempt a foreign (other nation) bank or a*
8 *subsidiary thereof from complying with all other laws and*
9 *regulations governing the business in which such a bank or*
10 *subsidiary is engaged.*

11 *This section creates and authorizes an exempt class of persons*
12 *pursuant to Section 1 of Article XV of the Constitution.*

13

14

Article 2. Representative Offices

15

16 *1780. (a) No foreign (other nation) bank shall establish or*
17 *maintain an office in this state at which it engages in*
18 *representational functions unless it is licensed to maintain a*
19 *representative office, agency, or branch office at that place.*

20 *(b) (1) No person shall establish or maintain an office in this*
21 *state as representative of a foreign (other nation) bank unless the*
22 *bank is licensed to maintain the office as a representative office.*

23 *(2) For purposes of this chapter, if any person establishes or*
24 *maintains an office in this state as representative of a foreign*
25 *(other nation) bank, the bank shall be deemed to establish and*
26 *maintain the office as a representative office.*

27 *(c) Neither subdivision (a) nor subdivision (b) shall be deemed*
28 *to prohibit a foreign (other nation) bank that maintains a federal*
29 *agency or federal branch in this state from establishing or*
30 *maintaining one or more representative offices in this state.*

31 *1781. (a) (1) No foreign (other nation) bank shall establish*
32 *or maintain a representative office unless the commissioner shall*
33 *have first approved the establishment of the office and issued a*
34 *license authorizing the bank to maintain the office.*

35 *(2) Paragraph (1) shall not be deemed to prohibit a foreign*
36 *(other nation) bank that maintains a federal agency or federal*
37 *branch in this state from establishing or maintaining one or more*
38 *representative offices in this state.*

39 *(b) If the commissioner finds the following with respect to an*
40 *application by a foreign (other nation) bank for approval to*

1 *establish a representative office, the commissioner shall approve*
2 *the application:*

3 *(1) That the bank, any controlling person of the bank, the*
4 *directors and executive officers of the bank or of any controlling*
5 *person of the bank, and the proposed management of the office*
6 *are each of good character and sound financial standing.*

7 *(2) That the financial history and condition of the bank are*
8 *satisfactory.*

9 *(3) That the management of the bank and the proposed*
10 *management of the office are adequate.*

11 *(4) That it is reasonable to believe that, if licensed to maintain*
12 *the office, the bank will operate the office in compliance with all*
13 *applicable laws, regulations, and orders.*

14 *If the commissioner finds otherwise, the commissioner shall deny*
15 *the application.*

16 *(c) Whenever an application by a foreign (other nation) bank*
17 *for approval to establish a representative office has been approved*
18 *and all conditions precedent to the issuance of a license authorizing*
19 *the bank to maintain the office have been fulfilled, the*
20 *commissioner shall issue the license.*

21 *1782. (a) No foreign (other nation) bank that is licensed to*
22 *maintain a representative office shall relocate the office unless*
23 *the commissioner shall have first approved the relocation and*
24 *issued a license authorizing the bank to maintain the office at the*
25 *new site.*

26 *(b) If the commissioner finds the following with respect to an*
27 *application by a foreign (other nation) bank for approval to*
28 *relocate a representative office, the commissioner shall approve*
29 *the application:*

30 *(1) In case the new site of the office is in the same vicinity as*
31 *the old site, that the relocation of the office will not be substantially*
32 *detrimental to the public convenience and advantage; or*

33 *(2) In case the new site of the office is not in the same vicinity*
34 *as the old site:*

35 *(A) That the relocation of the office from the old site will not*
36 *be substantially detrimental to the public convenience and*
37 *advantage in the area that is primarily served by the office at the*
38 *old site; and*

39 *(B) That the relocation of the office to the new site will promote*
40 *the public convenience and advantage.*

1 *If the commissioner finds otherwise, the commissioner shall deny*
2 *the application.*

3 *(c) Whenever an application by a foreign (other nation) bank*
4 *for approval to relocate a representative office has been approved*
5 *and all conditions precedent to the issuance of a license authorizing*
6 *the bank to maintain the office at the new site have been fulfilled,*
7 *the commissioner shall issue the license.*

8 *(d) Promptly after a foreign (other nation) bank that is licensed*
9 *to maintain a representative office relocates the office, the bank*
10 *shall surrender to the commissioner the license that authorized it*
11 *to maintain the office at the old site.*

12 *1783. A foreign (other nation) bank that is licensed to maintain*
13 *a representative office may, subject to any regulations that the*
14 *commissioner may prescribe, engage in representational functions*
15 *at the office but shall not solicit or accept deposits or otherwise*
16 *transact business at the office.*

17 *1784. (a) (1) No foreign (other nation) bank that is licensed*
18 *to maintain a representative office shall close the office unless the*
19 *commissioner shall have first approved the closing.*

20 *(2) Paragraph (1) shall not be deemed to prohibit a foreign*
21 *(other nation) bank that is licensed to maintain a representative*
22 *office from closing the office in accordance with Article 4*
23 *(commencing with Section 1825).*

24 *(b) If the commissioner finds, with respect to an application by*
25 *a foreign (other nation) bank for approval to close a representative*
26 *office, that the closing of the office will not be substantially*
27 *detrimental to the public convenience and advantage, the*
28 *commissioner shall approve the application. If the commissioner*
29 *finds otherwise, the commissioner shall deny the application.*

30 *(c) Whenever an application by a foreign (other nation) bank*
31 *for approval to close a representative office has been approved*
32 *and all conditions precedent to the closing have been fulfilled, the*
33 *bank may close the office and shall promptly thereafter surrender*
34 *to the commissioner the license that authorized it to maintain the*
35 *office.*

36

37 *Article 3. Agencies and Branch Offices*

38

39 *1800. (a) No foreign (other nation) bank shall transact*
40 *business in this state except at an agency or branch office that it*

1 *is licensed to maintain and at which it is permitted by this chapter*
2 *to transact the business transacted.*

3 *(b) Subdivision (a) shall not be deemed to prohibit:*

4 *(1) Any foreign (other nation) bank that maintains a federal*
5 *agency or federal branch in this state from transacting at the*
6 *federal agency or federal branch any business that it may be*
7 *authorized to transact under applicable federal laws and*
8 *regulations;*

9 *(2) Any foreign (other nation) bank from carrying on the*
10 *activities described in subdivision (d) of Section 191 of the*
11 *Corporations Code;*

12 *(3) Any foreign (other nation) bank that does not maintain an*
13 *agency or branch office from making in this state loans secured*
14 *by liens on real property located in this state; or*

15 *(4) Any foreign (other nation) bank that does not maintain an*
16 *agency or branch office from transacting trust business as*
17 *permitted under Section 1555.*

18 *(c) For purposes of subdivision (a), no foreign (other nation)*
19 *bank shall be deemed to be transacting business in this state merely*
20 *because a majority-owned subsidiary transacts business in this*
21 *state.*

22 *1801. No foreign (other nation) bank shall be licensed to*
23 *maintain any agency or branch office unless it is qualified to*
24 *transact intrastate business in this state under Chapter 21*
25 *(commencing with Section 2100) of Division 1 of Title 1 of the*
26 *Corporations Code.*

27 *1802. No foreign (other nation) bank shall be licensed to*
28 *maintain a retail branch office unless the deposits in such office*
29 *are insured by the Federal Deposit Insurance Corporation in*
30 *accordance with the provisions of the Federal Deposit Insurance*
31 *Act.*

32 *1803. (a) (1) No foreign (other nation) bank shall establish*
33 *or maintain an agency or branch office unless the commissioner*
34 *shall have first approved the establishment of that office and issued*
35 *a license authorizing the bank to maintain the office.*

36 *(2) Paragraph (1) shall not be deemed to prohibit a foreign*
37 *(other nation) bank from establishing or maintaining a federal*
38 *agency or federal branch in this state.*

39 *(b) If the commissioner finds the following with respect to an*
40 *application by a foreign (other nation) bank for approval to*

1 *establish an agency or branch office, the commissioner shall*
2 *approve the application:*

3 *(1) That the bank, any controlling person of the bank, the*
4 *directors and executive officers of the bank or of any controlling*
5 *person of the bank, and the proposed management of the office*
6 *are each of good character and sound financial standing.*

7 *(2) That the financial history and condition of the bank are*
8 *satisfactory.*

9 *(3) That the management of the bank and the proposed*
10 *management of the office are adequate.*

11 *(4) That it is reasonable to believe that, if licensed to maintain*
12 *the office, the bank will operate the office in a safe and sound*
13 *manner and in compliance with all applicable laws, regulations,*
14 *and orders.*

15 *(5) That the bank's plan to establish and to maintain the office*
16 *affords reasonable promise of successful operation.*

17 *(6) That the bank's establishment and maintenance of the office*
18 *will promote the public convenience and advantage.*

19 *(7) In case the office is to be a branch office, that the foreign*
20 *nation where the bank is domiciled permits banks organized under*
21 *the laws of this state and national banks headquartered in this*
22 *state to establish and maintain in those foreign nation offices*
23 *substantially equivalent to agencies, offices substantially equivalent*
24 *to branch offices, or wholly (except for directors' qualifying shares)*
25 *owned banks organized under the laws of the foreign nation.*

26 *If the commissioner finds otherwise, the commissioner shall deny*
27 *the application.*

28 *(c) Whenever an application by a foreign (other nation) bank*
29 *for approval to establish an agency or branch office has been*
30 *approved and all conditions precedent to the issuance of a license*
31 *authorizing the bank to maintain the office have been fulfilled, the*
32 *commissioner shall issue the license.*

33 *1804. (a) No foreign (other nation) bank which is licensed to*
34 *maintain an agency or branch office shall relocate such office*
35 *unless the commissioner shall have first approved such relocation*
36 *and issued a license authorizing such bank to maintain the office*
37 *at the new site.*

38 *(b) If the commissioner finds the following with respect to an*
39 *application by a foreign (other nation) bank for approval to*

1 *relocate any agency or branch office, the commissioner shall*
2 *approve such application:*

3 *(1) In case the new site of the office is in the same vicinity as*
4 *the old site:*

5 *(A) That it will not be unsafe or unsound for the bank to relocate*
6 *the office; and*

7 *(B) That the relocation of the office will not be substantially*
8 *detrimental to the public convenience and advantage, or that the*
9 *relocation is necessary in the interests of the safety and soundness*
10 *of the bank; or*

11 *(2) In case the new site of the office is not in the same vicinity*
12 *as the old site:*

13 *(A) That the bank's plan to relocate the office and to maintain*
14 *the office at the new site affords reasonable promise of successful*
15 *operation;*

16 *(B) That the relocation of the office from the old site will not*
17 *be substantially detrimental to the public convenience and*
18 *advantage in the area which is primarily served by the office at*
19 *the old site, or that the relocation is necessary in the interests of*
20 *the safety and soundness of the bank; and*

21 *(C) That the relocation of the office to the new site will promote*
22 *the public convenience and advantage.*

23 *If the commissioner finds otherwise, the commissioner shall deny*
24 *the application.*

25 *(c) Whenever an application by a foreign (other nation) bank*
26 *for approval to relocate an agency or branch office has been*
27 *approved and all conditions precedent to the issuance of a license*
28 *authorizing such bank to maintain such office at the new site have*
29 *been fulfilled, the commissioner shall issue such license.*

30 *(d) Promptly after a foreign (other nation) bank which is*
31 *licensed to maintain an agency or branch office relocates such*
32 *office, such bank shall surrender to the commissioner the license*
33 *which authorized it to maintain such office at the old site.*

34 *1805. (a) A foreign (other nation) bank that is licensed to*
35 *maintain an agency or branch office may transact commercial*
36 *banking business at the office, subject to the following:*

37 *(1) In case the office is a nondepository agency, the bank shall*
38 *not transact the business of accepting deposits.*

39 *(2) In case the office is a depository agency, the bank shall not*
40 *transact the business of accepting any deposits other than deposits*

1 of (A) a foreign nation, (B) an agency or instrumentality of a
2 foreign nation, or (C) a person which resides, is domiciled, and
3 maintains its principal place of business in a foreign nation. For
4 purposes of this paragraph, “person” means any individual,
5 proprietorship, joint venture, partnership, trust, business trust,
6 syndicate, association, joint stock company, corporation, limited
7 liability company, or any other organization or any branch or
8 division thereof.

9 (3) In case the office is a limited branch office, the bank shall
10 not transact the business of accepting any deposits other than (A)
11 deposits of the kind described in paragraph (2), or (B) deposits
12 that a corporation organized under Section 25A of the Federal
13 Reserve Act is permitted to accept.

14 (4) In case the office is a wholesale branch office, the bank shall
15 not transact the business of accepting any deposits other than (A)
16 deposits of the kind described in paragraph (2), (B) deposits of
17 one hundred thousand dollars (\$100,000) or more, or (C) deposits
18 the acceptance of which the commissioner determines by regulation
19 or order do not constitute engaging in domestic retail deposit
20 activities requiring deposit insurance protection.

21 (5) In case the office is an agency, limited branch office, or
22 wholesale branch office, the bank may, subject to any regulations
23 that the commissioner may prescribe, maintain credit balances.

24 (6) In any case, the bank shall not transact any business that it
25 is not authorized to transact or is prohibited from transacting
26 under the law of its domicile or that commercial banks organized
27 under the laws of this state are not authorized to transact or are
28 prohibited from transacting.

29 (b) No foreign (other nation) bank that is licensed to maintain
30 an agency or branch office shall transact any trust business at the
31 office except as permitted under Section 1503.

32 1806. (a) In addition to other provisions of this division and
33 Division 1 (commencing with Section 99) that are otherwise
34 applicable to or with respect to foreign (other nation) banks
35 licensed to maintain nondepository agencies, the following
36 provisions of this division shall apply to or with respect to each
37 foreign (other nation) bank licensed to maintain a nondepository
38 agency with respect to its business in this state as if the bank were
39 a commercial bank organized under the laws of this state:

1 (1) Article 6 (commencing with Section 405) of Chapter 3 of
2 Division 1.

3 (2) Chapter 17 (commencing with Section 1620).

4 (3) Chapter 6 (commencing with Section 530) of Division 1.

5 (4) Chapter 7 (commencing with Section 550) of Division 1.

6 (5) Chapter 8 (commencing with Section 660) of Division 1.

7 (6) Chapter 19 (commencing with Section 1620).

8 (b) In addition to other provisions of this division and Division
9 1 (commencing with Section 99) which are otherwise applicable
10 to or with respect to foreign (other nation) banks licensed to
11 maintain depositary agencies or branch offices, the following
12 provisions of this division and Division 1 (commencing with Section
13 99) shall apply to or with respect to each foreign (other nation)
14 bank licensed to maintain a depositary agency or branch office
15 with respect to its business in this state as if the bank were a
16 commercial bank organized under the laws of this state:

17 (1) Article 6 (commencing with Section 405) of Chapter 3 of
18 Division 1.

19 (2) Chapter 10 (commencing with Section 1320).

20 (3) Chapter 12 (commencing with Section 1400).

21 (4) Chapter 13 (commencing with Section 1450).

22 (5) Chapter 14 (commencing with Section 1460).

23 (6) Chapter 17 (commencing with Section 1630).

24 (7) Chapter 6 (commencing with Section 530) of Division 1.

25 (8) Chapter 7 (commencing with Section 550) of Division 1.

26 (9) Chapter 8 (commencing with Section 660) of Division 1.

27 (10) Chapter 19 (commencing with Section 1670).

28 (11) Section 1864 and Article 2 (commencing with Section
29 1900), Article 3 (commencing with Section 1905), and Article 4
30 (commencing with Section 1910) of Chapter 21.

31 (c) Whenever any provision of this chapter or of any regulation
32 or order issued under this chapter that is applicable to or with
33 respect to foreign (other nation) banks licensed to transact business
34 in this state is inconsistent with any provision of any other chapter
35 of this division and Division 1 (commencing with Section 99) that
36 is applicable to or with respect to foreign (other nation) banks
37 licensed to transact business in this state, the former provision
38 shall apply, and the latter provision shall not apply.

39 (d) (1) Whenever any provision of this division (other than the
40 provisions of this chapter) and Division 1 (commencing with

1 Section 99) is applicable to or with respect to foreign (other nation)
2 banks licensed to transact business in this state, the provision shall
3 be applied with any changes in points of detail as may be necessary
4 or appropriate.

5 (2) Without limiting the provisions of paragraph (1), for
6 purposes of any provision of this division (other than the provisions
7 of this chapter) and Division 1 (commencing with Section 99) that
8 is applicable to or with respect to a foreign (other nation) bank
9 licensed to transact business in this state:

10 (A) “Approved by (or approval of) the board” means approved
11 or ratified by the board of the bank, by a committee of the board
12 authorized to exercise the powers of the board with respect to the
13 particular matter, or by an officer of the bank who is assigned to
14 the head office of the bank and who has authority over the bank’s
15 business in this state, including authority to approve or ratify the
16 particular matter.

17 (B) “Head office” means the primary office of the bank.

18 (C) “Shareholders’ equity” means the shareholders’ equity of
19 the bank or, if the bank has no shareholders’ equity, the closest
20 equivalent account or accounts.

21 (e) Whenever any provision of this division (other than the
22 provisions of this chapter) and Division 1 (commencing with
23 Section 99) that is applicable to or with respect to a foreign (other
24 nation) bank licensed to transact business in this state limits the
25 amount of any assets or liabilities of the bank (including, by way
26 of example, the amount of borrowings of, obligations to, or
27 investments of the bank), for purposes of calculating the amount
28 of the assets or liabilities, only the assets or liabilities of the
29 agencies or branch offices of the bank shall be included, and the
30 assets and liabilities of offices of the bank outside this state shall
31 be excluded.

32 1807. (a) Whenever the commissioner calls for a report under
33 Section 453 from commercial banks organized under the laws of
34 this state, the commissioner shall call for a report from each
35 foreign (other nation) bank that is licensed to transact business
36 in this state.

37 (b) (1) A foreign (other nation) bank that is licensed to transact
38 business in this state shall prominently display in the lobby of each
39 agency and branch office, except an automated teller machine
40 branch office (as defined in Section 1330), a notice that any person

1 *may obtain a financial report from the bank. The notice shall*
2 *include the address and telephone number of the person or office*
3 *to be contacted for a financial report. The bank shall, promptly*
4 *after receiving a request for a financial report, mail or otherwise*
5 *furnish the financial report to the requester. The first financial*
6 *report shall be provided without charge.*

7 (2) *The financial report called for in this subdivision shall*
8 *contain either (A) the information that the commissioner may*
9 *require by regulation or (B) in the absence of a regulation, the*
10 *last balance sheet and income statement, each without any*
11 *schedules, that the bank filed with the commissioner pursuant to*
12 *Section 453.*

13 1808. *Each foreign (other nation) bank which is licensed to*
14 *maintain a depository agency, limited branch office, or wholesale*
15 *branch office shall, in accordance with such regulations as the*
16 *commissioner may prescribe, give notice that deposits in such*
17 *office are not insured by the Federal Deposit Insurance*
18 *Corporation.*

19 1809. (a) *In case a foreign (other nation) bank is licensed to*
20 *maintain a depository agency or branch office and such office is*
21 *not subject to the regulations of the Depository Institutions*
22 *Deregulation Committee, Regulation Q of the Board of Governors*
23 *of the Federal Reserve System, or Part 329 of the regulations of*
24 *the Federal Deposit Insurance Corporation, such bank shall, with*
25 *respect to deposits accepted at the office, comply with such*
26 *regulations regarding maximum interest rates on deposits,*
27 *prepayment of time deposits, and related matters as the*
28 *commissioner may prescribe as being necessary and appropriate*
29 *to maintain competitive equality between foreign (other nation)*
30 *banks and banks organized under the laws of this state which are*
31 *subject to the regulations of the Depository Institutions*
32 *Deregulation Committee, Regulation Q of the Board of Governors*
33 *of the Federal Reserve System, or Part 329 of the regulations of*
34 *the Federal Deposit Insurance Corporation.*

35 (b) *For purposes of, and notwithstanding any contrary*
36 *provisions of, Chapter 3.5 (commencing with Section 11340), Part*
37 *1 of Division 3 of Title 2 of the Government Code, whenever the*
38 *commissioner adopts a regulation or order of repeal of a regulation*
39 *under subdivision (a), the commissioner may, without describing*
40 *specific facts showing the need for immediate action, find that*

1 *adoption of such regulation or order of repeal is necessary for the*
2 *immediate preservation of the public peace, health and safety, or*
3 *general welfare, and such regulation or order of repeal shall be*
4 *deemed to be necessary for the immediate preservation of the*
5 *public peace, health and safety, or general welfare.*

6 1810. (a) *Each foreign (other nation) bank which is licensed*
7 *to transact business in this state shall keep the assets of such*
8 *business separate and apart from the assets of its business outside*
9 *this state.*

10 (b) *The creditors of the business in this state of a foreign (other*
11 *nation) bank which is licensed to transact business in this state*
12 *shall be entitled to priority over other creditors with respect to the*
13 *assets of such bank's business in this state.*

14 1811. (a) *In this section:*

15 (1) *“Adjusted liabilities,” when used with respect to a foreign*
16 *(other nation) bank, means the liabilities of such bank's business*
17 *in this state, excluding (A) accrued expenses, (B) any liability to*
18 *an office (whether in or outside of this state) or majority-owned*
19 *subsidiary of the bank, and (C) such other liabilities as the*
20 *commissioner may by regulation or order exclude.*

21 (2) *“Applicable minimum,” when used with respect to eligible*
22 *assets deposited or to be deposited with an approved depository*
23 *by a foreign (other nation) bank, means such amount as the*
24 *commissioner may from time to time by regulation or order*
25 *determine to be necessary for the maintenance of sound financial*
26 *condition, for the protection of the interests of creditors of the*
27 *bank's business in this state, or for the protection of the public*
28 *interest. However, in the case of a foreign (other nation) bank*
29 *which is licensed to maintain a branch office, the applicable*
30 *minimum shall in no event be less than 1 percent of the adjusted*
31 *liabilities of such bank.*

32 (3) *“Approved depository,” when used with respect to a foreign*
33 *(other nation) bank, means a bank organized under the laws of*
34 *this state or a national bank headquartered in this state which has*
35 *been selected by such foreign (other nation) bank and approved*
36 *by the commissioner for the purpose of acting as the approved*
37 *depository of the foreign (other nation) bank and which has filed*
38 *with the commissioner, in such form as the commissioner may by*
39 *regulation or order prescribe, an agreement to comply with all*

1 applicable provisions of this section and of any regulation or order
2 issued under this section.

3 (4) “Eligible assets” when used with respect to a foreign (other
4 nation) bank, means any of the following:

5 (A) Cash.

6 (B) Any security of the type described in Section 1572.

7 (C) Any negotiable certificate of deposit which (i) has a maturity
8 of not more than one year, (ii) is payable in the United States, and
9 (iii) is issued by a bank organized under the laws of a state of the
10 United States, by a national bank, or by a branch office of a foreign
11 (other nation) bank which is located in the United States.

12 (D) Any commercial paper which is payable in the United States
13 and which is rated P-1 or its equivalent by a nationally recognized
14 rating service; provided, however, that any conflict in rating shall
15 be resolved in favor of the lower rating.

16 (E) Any banker’s acceptance which is payable in the United
17 States and which is eligible for discount with a Federal Reserve
18 bank.

19 (F) Any other asset which the commissioner by regulation or
20 order determines to be eligible.

21 Notwithstanding the foregoing provisions of this paragraph,
22 “eligible asset,” when used with respect to a foreign (other nation)
23 bank, does not include any instrument the issuer of which (i) is,
24 or is affiliated with, such foreign (other nation) bank, (ii) is
25 domiciled in, or controlled by a bank or other person domiciled
26 in, the same foreign nation as the foreign (other nation) bank, or
27 (iii) is, or is controlled by, such foreign nation. For purposes of
28 the foregoing provision, to be “affiliated” means to control, to be
29 controlled by, or to be under common control with; and to
30 “control” has the meaning set forth in subdivision (b) of Section
31 1250.

32 (b) For purposes of this section:

33 (1) The amount of adjusted liabilities of a foreign (other nation)
34 bank’s business in this state shall be computed for such period, in
35 such manner, and on such basis as the commissioner may by
36 regulation or order prescribe.

37 (2) Any eligible asset shall be valued at the lesser of market or
38 par.

39 (c) (1) Before any foreign (other nation) bank is licensed to
40 transact business in this state, such bank shall deposit, and each

1 *foreign (other nation) bank which is licensed to transact business*
2 *in this state shall maintain on deposit, with an approved depository*
3 *eligible assets having a value in an amount not less than the*
4 *applicable minimum.*

5 (2) *Whenever a foreign (other nation) bank which is licensed*
6 *to transact business in this state ceases to be so licensed, such*
7 *bank shall thereafter maintain on deposit with an approved*
8 *depository eligible assets having a value in an amount not less*
9 *than the applicable minimum for such period of time as the*
10 *commissioner may determine to be necessary for the protection*
11 *of creditors of the bank's business in this state or for the protection*
12 *of the public interest.*

13 (d) (1) *No foreign (other nation) bank which maintains eligible*
14 *assets on deposit with an approved depository pursuant to this*
15 *section shall withdraw any such eligible assets except with the*
16 *prior approval of the commissioner.*

17 (2) *No approved depository which holds eligible assets on*
18 *deposit from a foreign (other nation) bank pursuant to this section*
19 *shall release any such eligible assets except with the prior approval*
20 *of the commissioner or as otherwise provided in subdivision (h).*

21 (e) *Any foreign (other nation) bank which maintains eligible*
22 *assets on deposit with an approved depository pursuant to this*
23 *section shall, unless the commissioner shall have suspended or*
24 *revoked its license to transact business in this state or taken*
25 *possession of its property and business in this state, be entitled to*
26 *receive any income paid on such eligible assets.*

27 (f) (1) *Whenever a foreign (other nation) bank deposits eligible*
28 *assets with, or withdraws eligible assets from, an approved*
29 *depository pursuant to this section, such bank shall do so in*
30 *accordance with such procedures and requirements as the*
31 *commissioner may by regulation or order prescribe.*

32 (2) *Whenever an approved depository receives, holds, or*
33 *releases eligible assets pursuant to this section, such approved*
34 *depository shall do so in accordance with such procedures and*
35 *requirements as the commissioner may by regulation or order*
36 *prescribe and shall file with the commissioner such reports as and*
37 *when the commissioner may by regulation or order require.*

38 (g) *Whenever a foreign (other nation) bank maintains eligible*
39 *assets on deposit with an approved depository pursuant to this*
40 *section:*

1 (1) *The eligible assets shall be deemed to be pledged to the*
2 *commissioner for the benefit of the creditors of the bank's business*
3 *in this state; and, notwithstanding any provision of the Uniform*
4 *Commercial Code to the contrary, the commissioner, for the benefit*
5 *of such creditors, shall be deemed to have a security interest in*
6 *such eligible assets.*

7 (2) *The eligible assets shall be free from any lien, charge, right*
8 *of setoff, credit, or preference in connection with any claim of the*
9 *approved depository against the bank.*

10 (h) (1) *In case the commissioner takes possession of the*
11 *property and business of a foreign (other nation) bank which*
12 *maintains eligible assets on deposit with an approved depository*
13 *pursuant to this section, such approved depository shall, upon*
14 *order of the commissioner, release such eligible assets to the*
15 *commissioner, as liquidator of the property and business of such*
16 *bank.*

17 (2) *In case a foreign (other nation) bank which maintains*
18 *eligible assets on deposit with an approved depository pursuant*
19 *to this section fails to pay any judgment creditor of its business in*
20 *this state and the commissioner has not taken possession of the*
21 *property and business of such bank, such approved depository*
22 *shall release such eligible assets to the commissioner, and the*
23 *commissioner shall make such disposition of the eligible assets,*
24 *as a court of competent jurisdiction of this state or of the United*
25 *States may order for the benefit of such judgment creditor. For*
26 *purposes of this paragraph, "judgment creditor of its business in*
27 *this state" means a person to whom the bank is required to pay*
28 *money under a judgment which (A) arose out of the bank's business*
29 *in this state, (B) has been entered by a court of this state or of the*
30 *United States, (C) has become final, in that all possibility of direct*
31 *attack on such judgment by way of appeal, motion for new trial,*
32 *motion to vacate, or petition for extraordinary writ has been*
33 *exhausted, and (D) has remained unpaid for a period of not less*
34 *than 60 days after becoming final.*

35 1812. (a) *In this section:*

36 (1) *"Adjusted liabilities," when used with respect to a foreign*
37 *(other nation) bank which is licensed to maintain a branch office*
38 *in this state, means the liabilities of such bank's business in this*
39 *state, excluding (A) accrued expenses, (B) any liability to an office*
40 *(whether in or outside of this state) or majority-owned subsidiary*

1 of the bank, and (C) such other liabilities as the commissioner may
2 by regulation or order exclude.

3 (2) “Eligible assets” means any asset which the commissioner
4 by regulation or order determines to be eligible for purposes of
5 this section. However, “eligible asset,” when used with respect to
6 a foreign (other nation) bank which is licensed to maintain a
7 branch office, includes (A) any asset which such bank maintains
8 on deposit pursuant to Section 1761 and (B) any reserves which
9 the bank maintains with respect to its business in this state in
10 accordance with requirements prescribed by the Board of
11 Governors of the Federal Reserve System.

12 (b) For purposes of this section, the amount of eligible assets
13 and the amount of adjusted liabilities of a foreign (other nation)
14 bank which is licensed to maintain a branch office in this state
15 shall each be computed for such period, in such manner, and on
16 such basis as the commissioner may by regulation or order
17 prescribe.

18 (c) A foreign (other nation) bank licensed to maintain a branch
19 office in this state shall hold at its branch offices in this state or
20 at such other places as the commissioner may approve, eligible
21 assets in such amount, if any, as the commissioner may from time
22 to time by regulation or order determine to be necessary for the
23 maintenance of sound financial condition, for the protection of
24 the interests of creditors of the bank’s business in this state, or for
25 the protection of the public interest. However, in no event shall
26 such amount exceed 108 percent of the adjusted liabilities of the
27 bank’s business in this state.

28 (d) If the commissioner finds, with respect to a foreign (other
29 nation) bank licensed to maintain a branch office in this state, that
30 such action is necessary for the maintenance of sound financial
31 condition, for the protection of the interests of creditors of such
32 bank’s business in this state, or for the protection of the public
33 interest, the commissioner may order the bank to place all or part
34 of the eligible assets which the bank is required to hold under
35 subdivision (c) in the custody of such bank organized under the
36 laws of this state or such national bank headquartered in this state
37 as the commissioner may designate.

38 1813. (a) (1) No foreign (other nation) bank which is licensed
39 to maintain an agency or branch office shall close such office
40 unless the commissioner shall have first approved such closing.

1 (2) Paragraph (1) shall not be deemed to prohibit a foreign
2 (other nation) bank which is licensed to maintain an agency or
3 branch office from closing such office in accordance with Article
4 4 (commencing with Section 1825).

5 (b) If the commissioner finds the following with respect to an
6 application by a foreign (other nation) bank for approval to close
7 an agency or branch office, the commissioner shall approve such
8 application:

9 (1) That it will not be unsafe or unsound for the bank to close
10 the office; and

11 (2) That the closing of the office will not be substantially
12 detrimental to the public convenience and advantage or that the
13 closing of the office is necessary in the interests of the safety and
14 soundness of the bank.

15 If the commissioner finds otherwise, the commissioner shall deny
16 the application.

17 (c) Whenever an application by a foreign (other nation) bank
18 for approval to close an agency or branch office has been approved
19 and all conditions precedent to such closing have been fulfilled,
20 such bank may close such office and shall promptly thereafter
21 surrender to the commissioner the license which authorized it to
22 maintain the office.

23

24

Article 4. Voluntary Surrender of License

25

26 1825. (a) Any foreign (other nation) bank that holds a license
27 to maintain an office may voluntarily surrender the license by
28 filing the license and a report with the commissioner. However,
29 any foreign (other nation) bank that holds licenses to maintain
30 two or more offices may not voluntarily surrender less than all of
31 the licenses.

32 (b) (1) Except as otherwise provided in paragraph (2), a
33 voluntary surrender of a license shall be effective on the 30th day
34 after the license and the report called for in subdivision (a) are
35 filed with the commissioner or on an earlier date as the
36 commissioner may by order specify.

37 (2) If a proceeding to revoke or suspend a license is pending at
38 the time when the license and the report called for in subdivision
39 (a) are filed with the commissioner or if a proceeding to revoke
40 or suspend a license or to impose conditions upon the surrender

1 of a license is instituted before the 30th day after the license and
2 the report called for in subdivision (a) are filed with the
3 commissioner, the voluntary surrender of the license shall become
4 effective at the time and upon the conditions that the commissioner
5 may by order specify.

6

7

Article 5. Enforcement

8

9 1830. If the commissioner finds that any person has violated
10 any provision of this chapter or of any regulation or order issued
11 under this chapter, the commissioner may order the person to pay
12 to the commissioner a civil penalty imposed pursuant to Section
13 329.

14 1831. If, after notice and a hearing, the commissioner finds
15 any of the following with respect to a foreign (other nation) bank
16 that is licensed to maintain an office, the commissioner may issue
17 an order suspending or revoking the license of the bank:

18 (a) That the bank has violated any provision of this division or
19 of any regulation or order issued under this division or any
20 provision of any other applicable law, regulation, or order;

21 (b) That the bank, in case it is licensed to transact business in
22 this state, is transacting the business in an unsafe or unsound
23 manner or, in any case, is transacting business elsewhere in an
24 unsafe or unsound manner;

25 (c) That the bank is in unsafe or unsound condition;

26 (d) That the bank has ceased to operate its office;

27 (e) That the bank is insolvent in that it has ceased to pay its
28 debts in the ordinary course of business, it cannot pay its debts as
29 they become due, or its liabilities exceed its assets;

30 (f) That the bank has suspended payment of its obligations, has
31 made an assignment for the benefit of its creditors, or has admitted
32 in writing its inability to pay its debts as they become due;

33 (g) That the bank is the subject of an order for relief in
34 bankruptcy or has sought other relief under any bankruptcy,
35 reorganization, insolvency, or moratorium law, or that any person
36 has applied for any such relief under any such law against the
37 bank and the bank has by any affirmative act approved of or
38 consented to the action or the relief has been granted;

39 (h) That a receiver, liquidator, or conservator has been
40 appointed for the bank or that any proceeding for such an

1 *appointment or any similar proceeding has been initiated in the*
2 *place where the bank is domiciled;*

3 *(i) That the existence of the bank or the authority of the bank*
4 *to transact banking business under the laws of the place where*
5 *the bank is domiciled has been suspended or terminated; or*

6 *(j) That any fact or condition exists that, if it had existed at the*
7 *time when the bank applied for its license to transact business in*
8 *this state, would have been grounds for denying the application.*

9 *1832. (a) If the commissioner finds that any of the factors set*
10 *forth in Section 1831 is true with respect to any foreign (other*
11 *nation) bank that is licensed to maintain an office and that it is*
12 *necessary, in case the bank is licensed to transact business in this*
13 *state, for the protection of the interests of creditors of the bank's*
14 *business in this state or, in any case, for the protection of the public*
15 *interest that the commissioner immediately suspend or revoke the*
16 *license of the bank, the commissioner may issue an order*
17 *suspending or revoking the license of the bank.*

18 *(b) (1) Within 30 days after an order is issued pursuant to*
19 *subdivision (a), the foreign (other nation) bank to which the order*
20 *is issued may file with the commissioner an application for a*
21 *hearing on the order. If the commissioner fails to commence the*
22 *hearing within 15 business days after the application is filed with*
23 *the commissioner (or within any longer period to which the bank*
24 *consents), the order shall be deemed rescinded. Within 30 days*
25 *after the hearing, the commissioner shall affirm, modify, or rescind*
26 *the order; otherwise, the order shall be deemed rescinded.*

27 *(2) The right of any foreign (other nation) bank to which an*
28 *order is issued under subdivision (a) to petition for judicial review*
29 *of the order shall not be affected by the failure of the bank to apply*
30 *to the commissioner for a hearing on the order pursuant to*
31 *paragraph (1).*

32 *1833. Any foreign (other nation) bank whose license to*
33 *maintain an office is suspended or revoked shall immediately*
34 *surrender the license to the commissioner.*

35 *1834. (a) Any foreign (other nation) bank to which an order*
36 *is issued under Section 1831 or 1832 may apply to the*
37 *commissioner to modify or rescind such order. The commissioner*
38 *shall not grant the application unless he or she finds that it is in*
39 *the public interest to do so and that it is reasonable to believe that*
40 *the bank will, if and when it is again licensed to maintain an office,*

1 *comply with all applicable provisions of this division and of any*
2 *regulation or order issued under this division.*

3 *(b) The right of any foreign (other nation) bank to which an*
4 *order is issued under Section 1831 or 1832 to petition for judicial*
5 *review of the order shall not be affected by the failure of the bank*
6 *to apply to the commissioner pursuant to subdivision (a) to modify*
7 *or rescind the order.*

8 *1835. (a) If the commissioner finds that any of the factors set*
9 *forth in Section 1781 is true with respect to any foreign (other*
10 *nation) bank which is licensed to transact business in this state*
11 *and that it is necessary for the protection of the interests of the*
12 *creditors of such bank's business in this state or for the protection*
13 *of the public interest that he or she take immediate possession of*
14 *the property and business of the bank, the commissioner may by*
15 *order forthwith take possession of the property and business of*
16 *the bank and retain possession until the bank resumes business in*
17 *this state or is finally liquidated. The bank may, with the consent*
18 *of the commissioner, resume business in this state upon such*
19 *conditions as the commissioner may prescribe.*

20 *(b) (1) Whenever the commissioner takes possession of the*
21 *property and business of a foreign (other nation) bank pursuant*
22 *to subdivision (a), such bank may, within 10 days, apply to the*
23 *superior court in the county in which the primary office of the bank*
24 *is located to enjoin further proceedings. The court may, after citing*
25 *the commissioner to show cause why further proceedings should*
26 *not be enjoined and after a hearing, dismiss such application or*
27 *enjoin the commissioner from further proceedings and order him*
28 *or her to surrender the property and business of the bank to the*
29 *bank or make such further order as may be just.*

30 *(2) The judgment of the court may be appealed by the*
31 *commissioner or by the bank in the manner provided by law for*
32 *appeals from the judgment of a superior court to the court of*
33 *appeal. In case the commissioner appeals the judgment of the*
34 *court, such appeal shall operate as a stay of the judgment, and the*
35 *commissioner shall not be required to post any bond.*

36 *(c) Whenever the commissioner takes possession of the property*
37 *and business of a foreign (other nation) bank pursuant to*
38 *subdivision (a), the commissioner shall conserve or liquidate the*
39 *property and business of such bank pursuant Chapter 7*
40 *(commencing with Section 550) and Chapter 8 (commencing with*

1 Section 600) of Division 1, and the provisions of such chapters
2 (except Sections 592, 593, and 690) shall apply as if the bank were
3 a bank organized under the laws of this state.

4 (d) When the commissioner has completed the liquidation of
5 the property and business of a foreign (other nation) bank, the
6 commissioner shall transfer any remaining assets to such bank in
7 accordance with such orders as the court may issue. However, in
8 case the bank has an office in another state of the United States
9 which is in liquidation and the assets of such office appear to be
10 insufficient to pay in full the creditors of the office, the court shall
11 order the commissioner to transfer to the liquidator of the office
12 such amount of any such remaining assets as appears to be
13 necessary to cover such insufficiency; if there are two or more
14 such offices and the amount of remaining assets is less than the
15 aggregate amount of insufficiencies with respect to the offices, the
16 court shall order the commissioner to distribute the remaining
17 assets among the liquidators of such offices in such manner as the
18 court finds equitable.

19
20 *CHAPTER 21. INTERNATIONAL AND FOREIGN BANKING AND*
21 *FINANCING*

22
23 *Article 1. International and Foreign Banking and Financing*
24 *Corporations*

25
26 1850. As used in this article, unless the context otherwise
27 requires, “corporation” means a corporation organized under
28 the laws of this state for the purpose of transacting business
29 pursuant to this article.

30 1851. The provisions of Chapter 1 (commencing with Section
31 99) of Division 1 applicable to, or with respect to, banks shall
32 apply to, or with respect to, as the case may be, corporations.

33 1852. When authorized by the previous written consent of the
34 commissioner as provided by Chapter 3 (commencing with Section
35 1040) one or more persons may organize a corporation.

36 1853. The articles of a corporation shall provide that the
37 purpose of the corporation is to engage in the business of
38 international and foreign banking and other international and
39 foreign financial operations, the business of banking and other
40 financial operations in any dependency or insular possession of

1 *the United States, and any other lawful activities which are not,*
2 *by applicable laws or regulations, prohibited to a corporation*
3 *transacting business under this article.*

4 *1854. The articles of incorporation shall be submitted to the*
5 *commissioner for his or her approval before they are filed with*
6 *the Secretary of State pursuant to the Corporations Code. After*
7 *the articles have been filed with the Secretary of State the*
8 *corporation shall file with the commissioner a copy thereof,*
9 *certified by the Secretary of State, and, after the organization*
10 *meeting of the directors, a copy of its bylaws certified by its*
11 *secretary.*

12 *1855. Each corporation shall have power, under such rules*
13 *and regulations as the commissioner may prescribe:*

14 *(a) To purchase, sell, discount, and negotiate, with or without*
15 *its endorsement or guaranty, notes, drafts, checks, bills of*
16 *exchange, acceptances, including bankers' acceptances, cable*
17 *transfers, and other evidences of indebtedness; to purchase and*
18 *sell, with or without its endorsement or guaranty, securities,*
19 *including the obligations of the United States or of any state thereof*
20 *but not including shares of stock in any corporation except as*
21 *herein provided; to accept bills or drafts drawn upon it subject to*
22 *such limitations and restrictions as the commissioner may impose;*
23 *to issue letters of credit; to purchase and sell coin, bullion, and*
24 *exchange; to borrow and to lend money; to issue debentures,*
25 *bonds, and promissory notes under such general conditions as to*
26 *security and such limitations as the commissioner may prescribe;*
27 *to receive deposits outside of the United States and to receive only*
28 *such deposits in this state or in any other state of the United States*
29 *as may be incidental to or for the purpose of carrying out*
30 *transactions in foreign countries or dependencies or insular*
31 *possessions of the United States.*

32 *(b) Generally, to exercise such powers as are incidental to the*
33 *powers conferred by this article or as may be usual, in the*
34 *determination of the commissioner, in connection with the*
35 *transaction of the business of banking or other financial operations*
36 *in the countries, colonies, dependencies, or possessions in which*
37 *it shall transact business and not inconsistent with the power*
38 *specifically granted herein. Nothing contained in this article shall*
39 *be construed to prohibit the commissioner, under his or her power*
40 *to prescribe rules and regulations, from limiting the aggregate*

1 amount of liabilities of any or all classes incurred by the
2 corporation and outstanding at any one time.

3 (c) To establish and maintain for the transaction of its business
4 branches or agencies in foreign countries, their dependencies or
5 colonies, and in any state of the United States, and in the
6 dependencies or insular possessions of the United States, at such
7 places as may be approved by the commissioner and under such
8 rules and regulations as he or she may prescribe, including any
9 state of the United States, or countries or dependencies not
10 specified in the original organization certificate.

11 (d) With the consent of the commissioner to purchase and hold
12 stock or other certificates of ownership in any other corporation
13 organized under the laws of this state for the purpose of transacting
14 business pursuant to this article, or under the laws of the United
15 States, or under the laws of any foreign country or a colony of
16 dependency thereof, or under the laws of any state, dependency
17 or insular possession of the United States but not engaged in the
18 general business of buying or selling goods, wares, merchandise,
19 or commodities in the United States, and not transacting any
20 business in the United States except such as in the judgment of the
21 commissioner may be incidental to its international or foreign
22 business.

23 1856. Except with the approval of the commissioner, no
24 corporation shall invest in any one corporation an amount in
25 excess of 10 per centum of its own shareholders' equity, except in
26 a corporation engaged in the business of banking, when 15 per
27 centum of its shareholders' equity may be so invested.

28 1857. No corporation shall purchase, own, or hold stock or
29 certificates of ownership in any other corporation organized under
30 this article or under the laws of any state which is in substantial
31 competition therewith, or which holds stock or certificates of
32 ownership in corporations which are in substantial competition
33 with the purchasing corporation.

34 1858. Nothing contained in this article shall prevent
35 corporations from purchasing and holding stock in any corporation
36 where such purchase shall be necessary to prevent a loss upon a
37 debt previously contracted in good faith; and stock so purchased
38 or acquired in corporations shall within six months from such
39 purchase be sold or disposed of at public or private sale unless

1 *the time to so dispose of same is extended by the commissioner as*
2 *provided by Section 1333.*

3 1859. *No corporation shall carry on any part of its business*
4 *in the United States except such as, in the judgment of the*
5 *commissioner, shall be incidental to its international or foreign*
6 *business. Except such as is incidental and preliminary to its*
7 *organization no corporation shall exercise any of the powers*
8 *conferred by this article until it has been duly authorized by the*
9 *commissioner to commence business under the provisions of this*
10 *article.*

11 1860. *No corporation shall engage in commerce or trade in*
12 *commodities except as specifically provided in this article, nor*
13 *shall it either directly or indirectly control or fix or attempt to*
14 *control or fix the price of any such commodities. The license of*
15 *any corporation violating this section shall be subject to forfeiture*
16 *as provided in this article.*

17 1861. *It shall be unlawful for any director, officer, agent, or*
18 *employee of any corporation to use or to conspire to use the credit,*
19 *the funds, or the power of the corporation to fix or control the*
20 *price of any commodities, and any person violating this section*
21 *shall be punished by a fine of not less than two thousand dollars*
22 *(\$2,000) nor more than ten thousand dollars (\$10,000),*
23 *imprisonment in a county jail for not more than one year,*
24 *imprisonment in the state prison, or by both that fine and*
25 *imprisonment, in the discretion of the court.*

26 1862. *No corporation shall be organized without adequate*
27 *shareholders' equity.*

28 1863. *The provisions of Chapter 5 (commencing with Section*
29 *1100) (except the provisions of Section 1121) applicable to, or*
30 *with respect to, banks shall apply to, or with respect to, as the case*
31 *may be, corporations.*

32 1864. *Any bank may invest in the shares of any corporation*
33 *organized under the provisions of this article, but the aggregate*
34 *amount of stock held in all corporations engaged in business of*
35 *the kind described in this chapter shall not exceed 10 percent of*
36 *the subscribing bank's shareholders' equity.*

37 1865. (a) *In this section, "foreign bank" means any company*
38 *organized under the laws of a foreign country, a territory of the*
39 *United States, Puerto Rico, Guam, American Samoa, or the Virgin*
40 *Islands, which engages in the business of banking, or any*

1 subsidiary or affiliate, organized under such laws, of any such
2 company. “Foreign bank” includes, without limitation, foreign
3 commercial banks, foreign merchant banks, and other foreign
4 institutions that engage in banking activities usual in connection
5 with the business of banking in the countries where such foreign
6 institutions are organized or operating.

7 (b) Except as otherwise provided in subdivision (c), a majority
8 of the shares of the capital stock of any corporation shall at all
9 times be held and owned by citizens of the United States, by
10 corporations the controlling interest in which is owned by citizens
11 of the United States, chartered under the laws of the United States
12 or of a state of the United States, or by firms or companies, the
13 controlling interest in which is owned by citizens of the United
14 States.

15 (c) Notwithstanding the provisions of subdivision (b), one or
16 more foreign banks, institutions organized under the laws of foreign
17 countries which own or control foreign banks, or banks organized
18 under the laws of the United States, the states of the United States,
19 or the District of Columbia, the controlling interests in which are
20 owned by any such foreign banks or institutions, may, with the
21 approval of the commissioner and upon such terms and conditions
22 and subject to such rules and regulations as the commissioner may
23 prescribe, own and hold 50 percent or more of the shares of the
24 capital stock of any corporation.

25 1866. Whenever it shall appear to the commissioner that any
26 corporation has violated the provisions of its articles of
27 incorporation or any law of this state, or is conducting its business
28 in an unsafe or unauthorized manner, or if the contributed capital
29 of any such corporation is impaired, or if the corporation shall
30 refuse to submit its books, papers and concerns to the inspection
31 of any examiner of the department or if any officer thereof shall
32 refuse to be examined upon oath touching the concerns of the
33 corporation or if the corporation shall suspend payment of its
34 obligations, or if from any examination or report provided for by
35 this article the commissioner shall have reason to conclude that
36 the corporation is in an unsound or unsafe condition to transact
37 the business for which it is organized, or that it is unsafe and
38 inexpedient for it to continue business, or if any corporation shall
39 neglect or refuse to observe any order of the commissioner
40 specified in Section 580 or 581, the commissioner may forthwith

1 *take possession of the property and business of such corporation*
2 *and retain such possession until such corporation shall resume*
3 *business, or its affairs be finally liquidated as provided by this*
4 *code for the liquidation of banks.*

5 *1867. No corporation shall deposit any of its funds with any*
6 *other moneyed corporation unless the other corporation has been*
7 *nominated and designated as a depository for the funds of the*
8 *depositing corporation by the vote of a majority of the directors*
9 *of the depositing corporation and has been approved by the*
10 *commissioner as a depository. The commissioner may in his or*
11 *her discretion revoke his or her approval of any such depository.*
12 *This limitation shall not apply to the deposit of funds by a*
13 *corporation with another moneyed corporation, that owns all or*
14 *a majority of the capital stock of the corporation.*

15 *1868. No corporation shall be the holder of any shares of its*
16 *own capital stock unless such stock shall have been taken to*
17 *prevent loss upon a debt previously contracted in good faith, and*
18 *stock so acquired shall, within six months from the time of its*
19 *acquisition, be sold or disposed of at public or private sale.*

20 *1869. No corporation shall, either directly or indirectly, make*
21 *any discount to any person for the purpose of enabling him to pay*
22 *for or hold shares of its stock either subscribed for or purchased*
23 *by him. Any corporation making any such discount shall forfeit to*
24 *the people of the State twice the amount of such discount.*

25 *1870. No corporation shall by any system of accounting or any*
26 *device of bookkeeping, directly or indirectly enter any of its assets*
27 *upon its books in the name of any other person, or under any title*
28 *or designation that is not truly descriptive thereof.*

29 *1871. Every corporation shall conform its methods of keeping*
30 *its books and records to such orders in respect thereto as have*
31 *been made and promulgated by the commissioner. Any corporation*
32 *that refuses or neglects to obey such order shall be subject to a*
33 *penalty of one hundred dollars (\$100) for each day it so refuses*
34 *or neglects.*

35 *1872. Each official communication directed by the*
36 *commissioner to a corporation or to any officer thereof, relating*
37 *to an examination or investigation conducted by the department*
38 *or containing suggestions or recommendations as to the conduct*
39 *of the business of such corporation, shall be submitted, by the*

1 officer receiving it, to the board at the next meeting of such board,
2 and duly noted in the minutes of the meetings of such board.

3 1873. On or before the first day of February in each year, each
4 corporation and every foreign corporation licensed by the
5 commissioner to transact the business of such a corporation in
6 this state, shall make a written report to the commissioner which
7 shall contain a statement of its condition on the morning of the
8 first day of January in that year and shall be in the form and
9 contain the matters prescribed by the commissioner. The
10 commissioner may, however, in his or her discretion, accept from
11 a corporation, which has branches in a foreign country or
12 countries, a report containing a statement of its condition as of a
13 date not later than the first day of January and not earlier than
14 the first day of November in the preceding year. Every report shall
15 be verified by the oaths of the two principal officers in charge of
16 the affairs of the corporation or foreign corporation at the time
17 of the verification, which shall state that the report is true and
18 correct in all respects to the best of the knowledge and belief of
19 the persons verifying it, and that the usual business of the
20 corporation or foreign corporation has been transacted at the
21 location required by this article and not elsewhere.

22 1874. Every corporation and foreign corporation shall also
23 make such other special reports to the commissioner as he or she
24 may from time to time require, which shall be in such form and
25 filed at such date as may be prescribed by the commissioner and
26 shall, if required by the commissioner, be verified in such manner
27 as he or she may prescribe.

28 1875. If any corporation or foreign corporation shall fail to
29 make any report required by this article on or before the day
30 designated for the making thereof, or shall fail to include therein
31 any matter required by the commissioner, it shall forfeit to the
32 people of the state the sum of one hundred dollars (\$100) for every
33 day that such report shall be delayed or withheld, and for every
34 day that it shall fail to report any such omitted matter, unless the
35 time therefor shall have been extended by the commissioner.

36 1876. Every corporation shall hold a meeting of its stockholders
37 annually upon a date fixed in its bylaws at its main office, or if its
38 main office is to be located outside of this State, at its branch or
39 other office in this State.

1 1877. Every corporation shall keep at its main office, or if its
2 main office is to be located outside of this state, at its branch or
3 other office in this state, books containing the names of all
4 stockholders thereof, and the names and addresses of the members
5 of its board of directors, together with copies of all reports made
6 by it to the commissioner.

7 1878. Every corporation shall make reports to the
8 commissioner at such times and in such form as the commissioner
9 may require and is subject to examination by examiners appointed
10 by the commissioner, to the extent and whenever and as often as
11 the commissioner shall deem it advisable, but in no case less than
12 once every two calendar years. The cost of such examinations shall
13 be fixed by the commissioner and be paid by the corporation
14 examined.

15 1879. No officer, director, clerk or other employee of any
16 corporation, and no person in any way interested or concerned in
17 the management of its affairs, shall as individuals discount, or
18 directly or indirectly, make any loan upon any note or other
19 evidence of debt, which he shall know to have been offered for
20 discount to such corporation, and to have been refused. Every
21 person violating the provisions of this section, shall, for each
22 offense, forfeit to the people of the State twice the amount of the
23 loan which he shall have made.

24 1880. Every officer, director, clerk, employee, or agent of any
25 corporation who embezzles, abstracts, or willfully misapplies any
26 of the moneys, funds, credits, securities, evidence of indebtedness
27 or assets of any character of such corporation, or who, without
28 authority from the directors, issues or puts forth any certificate of
29 deposit, draws any order or bill of exchange, makes any
30 acceptance, assigns any note, bond, debenture, draft, bill of
31 exchange, mortgage, judgment, or decree, or who makes any false
32 entry in any book, report, or statement of such corporation with
33 intent, in either case, to injure or defraud such corporation or any
34 other company, body politic or corporate, or any individual person,
35 or to deceive any officer of such corporation, the commissioner,
36 or any agent or examiner appointed to examine the affairs of any
37 such corporation; and every receiver of any corporation and every
38 clerk or employee of such receiver who shall embezzle, abstract,
39 or willfully misapply or wrongfully convert to his or her own use
40 any moneys, funds, credits, or assets of any character which may

1 *come into his or her possession or under his or her control in the*
2 *execution of his or her trust or the performance of the duties of*
3 *his or her employment; and every such receiver or clerk or*
4 *employee of such receiver who shall, with intent to injure or*
5 *defraud any person, body politic or corporate, or to deceive or*
6 *mislead the commissioner or any agent or examiner appointed to*
7 *examine the affairs of such receiver, shall make any false entry in*
8 *any book, report, or record of any matter connected with the duties*
9 *of such receiver; and every person who with like intent aids or*
10 *abets any officer, director, clerk, employee, or agent of any*
11 *corporation, or receiver or clerk or employee of such receiver as*
12 *above said in any violation of this article shall upon conviction*
13 *thereof be imprisoned for two, three, or four years, and may also*
14 *be fined not more than five thousand dollars (\$5,000), in the*
15 *discretion of the court.*

16 *1881. Whoever being connected in any capacity with any*
17 *corporation represents in any way that the State of California is*
18 *liable for the payment of any bond or other obligation, or the*
19 *interest thereon, issued or incurred by any corporation, or that*
20 *the State of California incurs any liability in respect of any act or*
21 *omission of the corporation, shall be punished by a fine of not*
22 *more than ten thousand dollars (\$10,000) and by imprisonment*
23 *in the state prison.*

24 *1882. No person shall act in this State as the representative of*
25 *any foreign corporation in transacting the business described in*
26 *this article as the business of a corporation unless such corporation*
27 *shall have complied with the provisions of this article relating to*
28 *such corporations.*

29 *1883. Every foreign corporation before being licensed by the*
30 *commissioner to transact in this state the business of a corporation,*
31 *or any part thereof, shall subscribe and acknowledge and submit*
32 *to the commissioner at his or her office, an application certificate*
33 *in duplicate, which shall specifically state:*

34 *(a) The name of such foreign corporation.*

35 *(b) The place where its business is to be transacted in this state.*

36 *(c) The amount of its capital stock actually paid in cash and the*
37 *amount subscribed for and unpaid.*

38 *(d) A complete and detailed statement of its financial condition*
39 *as of a date within 60 days prior to the date of such application*
40 *certificate.*

1 1884. At the time the application certificate is first submitted
2 to the commissioner, such corporation shall also submit a duly
3 authenticated copy of its charter, or articles, and its bylaws.

4 1885. No foreign corporation shall transact in this state the
5 business defined in this article or any part thereof, unless such
6 corporation shall have:

7 (a) Been authorized by its charter to carry on such business
8 and shall have complied with the laws of the state or country under
9 which it is incorporated.

10 (b) Made the deposit with the State Treasurer required by this
11 article.

12 (c) Designated the commissioner, by an instrument in writing
13 duly executed, its true and lawful attorney upon whom all process
14 in any action or proceeding by any resident of this state against
15 it may be served with the same effect as if it were a domestic
16 corporation and had been lawfully served with process within this
17 state.

18 (d) Received a license duly issued to it by the commissioner.

19 1886. When the commissioner shall have issued a license to
20 any foreign corporation, it may engage in the business of a
21 corporation of the kind authorized by this article at the location
22 specified in the license.

23 1887. Every foreign corporation, before receiving a license to
24 transact business in this state, shall deposit with the State
25 Treasurer of the State of California upon authorization of the
26 commissioner, in trust as security for the depositors with and
27 creditors of such corporation in this state, lawful money of the
28 United States or securities of the kind and character described in
29 Article 3 (commencing at Section 1570) of Chapter 16, of the value
30 of one hundred thousand dollars (\$100,000). Such foreign
31 corporation so long as it shall continue solvent and comply with
32 the laws of this state, may be permitted by the commissioner to
33 collect the interest on the securities so deposited and from time to
34 time to exchange such securities for others, and examine and
35 compare such securities, as provided by said article.

36 1888. The foreign corporation shall pay a license fee of five
37 hundred dollars (\$500).

38 1889. Every foreign corporation, duly licensed by the
39 commissioner to transact in this state the business defined and
40 authorized in this article, or any part thereof, shall within 30 days

1 after the date of such license, submit to the commissioner a
2 statement verified by two of its principal officers, which shall
3 contain the full name and business address of every individual,
4 partnership or unincorporated association, who is acting or whom
5 it proposes to have act as its agent or representative in this state.
6 Whenever any such corporation shall engage any person to act
7 for it in this state and the name and address of such person is not
8 contained in such verified statement submitted to the commissioner,
9 such foreign corporation shall forthwith submit to the
10 commissioner an amended statement verified in the same manner
11 as the original. A violation of this provision shall subject such
12 foreign corporation to a forfeiture of one thousand dollars (\$1,000)
13 for each offense.

14 1890. Whenever the commissioner shall have revoked the
15 license of any such foreign corporation and shall have taken the
16 action to make such revocation effective, all the rights and
17 privileges of the foreign corporation to transact business in this
18 state shall forthwith cease and determine.

19 1891. Nothing in this division restricts the right of a state
20 international or foreign banking or financing corporation to
21 convert into an international or foreign banking or financing
22 corporation organized under the laws of the United States upon
23 compliance with such laws.

24 1892. An international or foreign banking or financing
25 corporation organized under the laws of the United States may
26 convert into a state international or foreign banking or financing
27 corporation with the approval of the commissioner which he or
28 she shall not grant unless he or she is satisfied that such
29 international or foreign banking or financing corporation
30 organized under the laws of the United States meets all of the
31 requirements set forth in this article for the establishment of a
32 state international or foreign banking or financing corporation.

33 1893. Nothing in this division restricts the right of any one or
34 more state international or foreign banking or financing
35 corporations to merge into or consolidate with one or more
36 international or foreign banking or financing corporations
37 organized under the laws of the United States.

38 1894. Nothing in this division restricts one or more
39 international or foreign banking or financing corporations
40 organized under the laws of the United States from merging into

1 *one or more state, international or foreign banking or financing*
2 *corporations. For the purpose of effecting any such merger any*
3 *such international or foreign banking or financing corporation*
4 *shall be deemed a “foreign corporation” as that term is used in*
5 *Section 1108 of the Corporations Code and the laws of Congress*
6 *shall be deemed the “laws of the state” in which such international*
7 *or foreign banking or financing corporation is formed.*

8 *1895. Whenever a state international or foreign banking or*
9 *financing corporation survives the merger of one or more*
10 *international or foreign banking or financing corporations and*
11 *the agreement for merger has been filed with the Secretary of State*
12 *with the approval of the commissioner endorsed thereon, a copy*
13 *thereof, certified by the Secretary of State, shall immediately be*
14 *filed with the commissioner and upon, but not until, such filing the*
15 *merger shall be and become effective for all purposes.*

16 *1896. Whenever one or more state international or foreign*
17 *banking or financing corporations and one or more international*
18 *or foreign banking or financing corporations organized under the*
19 *laws of the United States have been merged or consolidated, the*
20 *surviving or resulting international or foreign banking or financing*
21 *corporation succeeds without other transfer to all the rights and*
22 *property of each constituent international or foreign banking or*
23 *financing corporation and is subject to all the debts and liabilities*
24 *of each such constituent corporation in the same manner as if the*
25 *surviving or resulting international or foreign banking or financing*
26 *corporation had incurred them.*

27 *All rights of creditors of each constituent international or foreign*
28 *banking or financing corporation are preserved unimpaired,*
29 *limited in lien to the property affected by such liens immediately*
30 *prior to the time of the consolidation or merger.*

31 *Any action or proceeding pending by or against any one of the*
32 *constituent international or foreign banking or financing*
33 *corporations may be prosecuted through judgment, which binds*
34 *the resulting or surviving international or foreign banking or*
35 *financing corporation; or such consolidated or surviving*
36 *corporation may be proceeded against or substituted in the place*
37 *of any such constituent corporation.*

38 *1897. Whenever an international or foreign banking or*
39 *financing corporation organized under the laws of the United*
40 *States converts into a state international or foreign banking or*

1 *financing corporation, or whenever such state corporation converts*
2 *into such corporation organized under the laws of the United*
3 *States, or if any such state corporation merges or consolidates*
4 *with any such corporation organized under the laws of the United*
5 *States, the surviving or resulting corporation shall be deemed to*
6 *be the same corporate entity as the converting or constituent*
7 *corporation and any reference to the converting corporation or*
8 *to any constituent corporation, whether executed or taking effect*
9 *before or after the conversion, merger or consolidation, shall be*
10 *deemed a reference to the surviving or resulting corporation.*

11
12 *Article 2. Bank Investments in International or Foreign Banking*
13 *or Financing Companies Organized Under the Laws of the United*
14 *States*
15

16 *1900. Any bank may, with the consent of the commissioner,*
17 *upon such conditions and under such regulations as the*
18 *commissioner may prescribe, invest in the stock of one or more*
19 *corporations organized under the laws of the United States for the*
20 *purpose of engaging in international or foreign banking or other*
21 *international or foreign financial operations, or in banking or*
22 *other financial operations in a dependency or insular possession*
23 *of the United States, either directly or through the agency,*
24 *ownership or control of local institutions in foreign countries, or*
25 *in dependencies or insular possessions of the United States and*
26 *to act when required by the Secretary of the Treasury of the United*
27 *States as fiscal agents of the United States; provided, however,*
28 *that the aggregate amount of stock held in all corporations engaged*
29 *in business of the kind described in this chapter shall not exceed*
30 *10 per centum of the subscribing bank's shareholders' equity.*

31 *1901. Every bank investing in the capital stock of any*
32 *corporation described in Section 1900 shall be required to furnish*
33 *information concerning the condition of such corporation to the*
34 *commissioner upon demand, and the commissioner may order*
35 *special examinations of said corporation at such time or times as*
36 *he or she may deem appropriate. The cost of such special*
37 *examinations shall be paid by said corporation.*

38 *1902. Before any bank shall be permitted to purchase stock in*
39 *any corporation described in Section 1900 the said corporation*
40 *shall enter into an agreement or undertaking with the commissioner*

1 to restrict its operations or conduct of its business in such manner
2 or under such limitations and restrictions as the said commissioner
3 may prescribe for the place or places wherein such business is to
4 be conducted. If at any time the commissioner shall ascertain that
5 the regulations prescribed by him or her are not being complied
6 with, said commissioner is hereby authorized and shall have power
7 to institute an investigation of the matter and to send for persons
8 and papers, subpoena witnesses and administer oaths in order to
9 satisfy himself or herself as to the actual nature of the transactions
10 referred to. Should such investigation result in establishing the
11 failure of the corporation in question, or any bank which may be
12 a stockholder therein, to comply with the regulations laid down
13 by the said commissioner, said bank may be required to dispose
14 of its stockholding in the said corporation upon reasonable notice.

15

16 *Article 3. Bank Investments in International or Foreign Banking*
17 *or Financing Corporations Organized Under the Laws of any State*
18 *of the United States*

19

20 *1905. Any bank may, with the consent of the commissioner,*
21 *upon such conditions and under such regulations as the*
22 *commissioner may prescribe, invest in the stock of one or more*
23 *corporations organized under the laws of any state of the United*
24 *States (other than a corporation organized under the laws of this*
25 *state for the purposes of transacting business under the provisions*
26 *of Article 1 (commencing with Section 1850) and principally*
27 *engaged in international or foreign banking, or banking in a*
28 *dependency or insular possession of the United States either*
29 *directly or through the agency, ownership, or control of local*
30 *institutions in foreign countries, or in dependencies or insular*
31 *possessions of the United States; provided, however, that the stock*
32 *at the time of the acquisition would constitute a permissible*
33 *investment for a national bank; and provided, further, that the*
34 *aggregate amount of stock held in all corporations engaged in*
35 *business of the kind described in this chapter shall not exceed 10*
36 *percent of the subscribing bank's shareholders' equity. Nothing*
37 *in this section shall be construed in any way to limit the powers*
38 *conferred by Section 1864.*

1 *Article 4. Bank Investments in Foreign Banks*

2
3 *1910. Any bank may, with the consent of the commissioner,*
4 *upon such conditions and under such regulations as the*
5 *commissioner may prescribe, acquire and hold, directly or*
6 *indirectly, the stock or other evidences of ownership in one or*
7 *more banks organized under the laws of a foreign country or a*
8 *dependency or insular possession of the United States and not*
9 *engaged, directly or indirectly, in any activity in the United States*
10 *except as, in the judgment of the commissioner, shall be incidental*
11 *to the international or foreign business of the bank. An application*
12 *for consent shall be in such form and contain such information as*
13 *the commissioner may require, and be accompanied by a fee of*
14 *five hundred dollars (\$500). The aggregate amount invested by*
15 *any bank in the stock or other evidences of ownership shall not in*
16 *any way be subject to, or included in, the limitations prescribed*
17 *in Sections 1864, 1900, and 1905, but the aggregate amount*
18 *invested directly or indirectly (other than through a corporation*
19 *organized under the laws of this state for the purpose of transacting*
20 *business under Article 1 (commencing with Section 1850) or*
21 *operating under Article 2 (commencing with Section 1900) or*
22 *Article 3 (commencing with Section 1905) in the stock or other*
23 *evidences of ownership of all foreign banks, taken together with*
24 *investments by the subscribing bank in the shares of corporations*
25 *organized under the laws of this state for the purpose of transacting*
26 *business under Article 1 (commencing with Section 1850) or*
27 *operating under Article 2 (commencing with Section 1900) or*
28 *Article 3 (commencing with Section 1905), shall not at any one*
29 *time exceed 25 percent of the subscribing bank's shareholders'*
30 *equity.*

31 *SEC. 4. Division 1.2 (commencing with Section 2000) is added*
32 *to the Financial Code, to read:*

33
34 *DIVISION 1.2. MONEY TRANSMISSION ACT*

35
36 *CHAPTER 1. GENERAL PROVISIONS*

37
38 *2000. This chapter shall be known and may be cited as the*
39 *Money Transmission Act.*

40 *2001. The Legislature finds and declares all of the following:*

1 (a) Money transmission businesses conduct a significant amount
2 of business in this state and technological advances are occurring
3 in the provision of money transmission services.

4 (b) Persons who use money transmission businesses in this state
5 use those businesses for, among other purposes, paying for the
6 necessities of life and transmitting money to family members.

7 (c) The failure of money transmission businesses to fulfill their
8 obligations would cause loss to consumers, disrupt the payments
9 mechanism in this state, undermine public confidence in financial
10 institutions doing business in this state, and adversely affect the
11 health, safety, and general welfare of persons in this state.

12 (d) To protect the interests of consumers of money transmission
13 businesses in this state, to maintain public confidence in financial
14 institutions doing business in this state, and to preserve the health,
15 safety, and general welfare of the people of this state, it is
16 necessary to regulate money transmission businesses in this state.

17 2002. It is the intent of the Legislature that the provisions of
18 this act accomplish all of the following:

19 (a) Protect the interests of persons in this state who use money
20 transmission services.

21 (b) Provide for the safe and sound conduct of the business of
22 licensees.

23 (c) Maintain public confidence in licensees.

24 2003. For purposes of this chapter, the following definitions
25 shall apply:

26 (a) "Affiliate," when used with respect to a specified person,
27 means any person controlling, controlled by, or under common
28 control with, that specified person, directly or indirectly through
29 one or more intermediaries. For purposes of subdivisions (q) and
30 (v), a specified person is affiliated with another person if that
31 person controls, is controlled by, or under common control through
32 the ownership directly or indirectly of shares or equity securities
33 possessing more than 50 percent of the voting power of that
34 specified person.

35 (b) "Agent" means a person that provides money transmission
36 in California on behalf of the licensee, provided that the licensee
37 becomes liable for the money transmission from the time money
38 or monetary value is received by that person. However, "agent"
39 does not include any officer or employee of the licensee when
40 acting as such at an office of a licensee.

- 1 (c) “Applicant” means a person that files an application for a
2 license or for acquisition of control of a licensee under this chapter.
- 3 (d) “Average daily outstanding” means the amount of
4 outstanding money transmission obligations in California at the
5 end of each day in a given period of time, added together, and
6 divided by the total number of days in that period of time.
- 7 (e) “Branch office” means any office in this state of a licensee
8 or agent at which the licensee receives money or monetary value
9 to provide money transmission, either directly or through an agent.
- 10 (f) “Business day” means one of the following:
- 11 (1) When used with respect to any act to be performed in this
12 state, any day other than Saturday, Sunday, or any other day that
13 is provided for as a holiday in the Government Code.
- 14 (2) When used with respect to any act to be performed in any
15 jurisdiction other than this state, any day other than a day that is
16 a legal holiday under the laws of that jurisdiction.
- 17 (g) “Commissioner” means the Commissioner of Financial
18 Institutions.
- 19 (h) “Control” has the meaning set forth in Section 1250.
- 20 (i) “Day” means calendar day.
- 21 (j) “In California” or “in this state” means physically located
22 in California, or with, to, or from persons located in California.
- 23 (k) “Issue” and “issuer” mean, with regard to a payment
24 instrument, the entity that is the maker or drawer of the instrument
25 in accordance with the California Commercial Code and is liable
26 for payment. With regard to stored value, “issue” and “issuer”
27 mean the entity that is liable to the holder of stored value and has
28 undertaken or is obligated to pay the stored value. Only a licensee
29 may issue stored value or payment instruments.
- 30 (l) “Licensee” means a corporation or limited liability company
31 licensed under this chapter.
- 32 (m) “Monetary value” means a medium of exchange, whether
33 or not redeemable in money.
- 34 (n) “Money” means a medium of exchange that is authorized
35 or adopted by the United States or a foreign government. The term
36 includes a monetary unit of account established by an
37 intergovernmental organization or by agreement between two or
38 more governments.
- 39 (o) “Money transmission” means any of the following:
- 40 (1) Selling or issuing payment instruments.

1 (2) *Selling or issuing stored value.*

2 (3) *Receiving money for transmission.*

3 (p) *“Outstanding,” with respect to payment instruments and*
4 *stored value, means issued or sold by the licensee in the United*
5 *States and not yet paid or refunded by the licensee, or issued or*
6 *sold on behalf of the licensee in the United States by its agent and*
7 *reported as sold, but not yet paid or refunded by the licensee.*
8 *“Outstanding,” with respect to receiving money for transmission*
9 *means all money or monetary value received in the United States*
10 *for transmission by the licensee or its agents but not yet paid to*
11 *the beneficiaries or refunded to the person from whom the money*
12 *or monetary value was received. All outstanding money*
13 *transmission of a licensee is and shall remain a liability of the*
14 *licensee until it is no longer outstanding.*

15 (q) *“Payment instrument” means a check, draft, money order,*
16 *traveler’s check, or other instrument for the transmission or*
17 *payment of money or monetary value, whether or not negotiable.*
18 *The term does not include a credit card voucher, letter of credit,*
19 *or any instrument that is redeemable by the issuer for goods or*
20 *services provided by the issuer or its affiliate.*

21 (r) *“Person” means an individual, corporation, business trust,*
22 *estate, trust, partnership, proprietorship, syndicate, limited liability*
23 *company, association, joint venture, government, governmental*
24 *subdivision, agency or instrumentality, public corporation or joint*
25 *stock company, or any other organization or legal or commercial*
26 *entity, provided, however, that “person,” when used with respect*
27 *to acquiring control of or controlling a specified person, includes*
28 *any combination of two or more persons acting in concert.*

29 (s) *“Receiving money for transmission” or “money received*
30 *for transmission” means receiving money or monetary value in*
31 *the United States for transmission within or outside the United*
32 *States by electronic or other means. The term does not include*
33 *sale or issuance of payment instruments and stored value.*

34 (t) *“Record” means information that is inscribed on a tangible*
35 *medium or that is stored in an electronic or other medium and is*
36 *retrievable in perceivable form.*

37 (u) *“State” means a state of the United States, the District of*
38 *Columbia, Puerto Rico, the United States Virgin Islands, or any*
39 *territory or insular possession subject to the jurisdiction of the*
40 *United States.*

1 (v) “Stored value” means monetary value representing a claim
2 against the issuer that is stored on an electronic or digital medium
3 and evidenced by an electronic or digital record, and that is
4 intended and accepted for use as a means of redemption for money
5 or monetary value or payment for goods or services. The term
6 does not include a credit card voucher, letter of credit, or any
7 stored value that is only redeemable by the issuer for goods or
8 services provided by the issuer or its affiliate, except to the extent
9 required by applicable law to be redeemable in cash for its cash
10 value.

11 (w) “Traveler’s check” means an instrument that meets all of
12 the following:

13 (1) Is designated on its face by the term “traveler’s check” or
14 by any substantially similar term or is commonly known and
15 marketed as a traveler’s check.

16 (2) Contains a provision for a specimen signature of the
17 purchaser to be completed at the time of purchase.

18 (3) Contains a provision for a countersignature of the purchaser
19 to be completed at the time of negotiation.

20

21

CHAPTER 2. EXEMPTIONS

22

23 2010. This chapter does not apply to the following:

24 (a) The United States or a department, agency, or
25 instrumentality thereof, including any federal reserve bank and
26 any federal home loan bank.

27 (b) Money transmission by the United States Postal Service or
28 by a contractor on behalf of the United States Postal Service.

29 (c) A state, county, city, or any other governmental agency or
30 governmental subdivision of a state.

31 (d) A commercial bank or industrial bank, the deposits of which
32 are insured by the Federal Deposit Insurance Corporation or its
33 successor, or any foreign (other nation) bank that is licensed under
34 Article 3 (commencing with Section 1800) of Chapter 20 or that
35 is authorized under federal law to maintain a federal agency or
36 federal branch office in this state; a trust company licensed
37 pursuant to Section 1042 or a national association authorized
38 under federal law to engage in a trust banking business; an
39 association or federal association, as defined in Section 5102 the
40 deposits of which are insured by the Federal Deposit Insurance

1 Corporation or its successor; and any federally or state chartered
 2 credit union the member accounts of which are insured or
 3 guaranteed as provided in Section 14858.

4 (e) Electronic funds transfer of governmental benefits for a
 5 federal, state, county, or local governmental agency by a contractor
 6 on behalf of the United States or a department, agency, or
 7 instrumentality thereof, or a state or governmental subdivision,
 8 agency, or instrumentality thereof.

9 (f) A board of trade designated as a contract market under the
 10 federal Commodity Exchange Act (7 U.S.C. Secs. 1-25, incl.) or
 11 a person that, in the ordinary course of business, provides
 12 clearance and settlement services for a board of trade to the extent
 13 of its operation as or for such a board.

14 (g) A person that provides clearance or settlement services
 15 pursuant to a registration as a clearing agency or an exemption
 16 from registration granted under the federal securities laws to the
 17 extent of its operation as such a provider.

18 (h) An operator of a payment system to the extent that it provides
 19 processing, clearing, or settlement services, between or among
 20 persons excluded by this section, in connection with wire transfers,
 21 credit card transactions, debit card transactions, stored value
 22 transactions, automated clearing house transfers, or similar funds
 23 transfers, to the extent of its operation as such a provider.

24 (i) A person registered as a securities broker-dealer under
 25 federal or state securities laws to the extent of its operation as
 26 such a broker-dealer.

27 (j) A person listed under subdivision (d) is exempted from all
 28 the provisions of this chapter, except Sections 2062 and 2063.

29 2011. The commissioner may, by regulation or order, either
 30 unconditionally or upon specified terms and conditions or for
 31 specified periods, exempt from this chapter any person or
 32 transaction or class of persons or transactions, if the commissioner
 33 finds such action to be in the public interest and that the regulation
 34 of such persons or transactions is not necessary for the purposes
 35 of this chapter.

36

37

CHAPTER 3. LICENSES

38

39 2030. (a) A person shall not engage in the business of money
 40 transmission in this state, or advertise, solicit, or hold itself out

1 *as providing money transmission in this state, unless the person*
2 *is licensed or exempt from licensure under this chapter or is an*
3 *agent of a person licensed or exempt from licensure under this*
4 *chapter.*

5 *(b) A license under this chapter is not transferable or assignable.*

6 2031. *(a) No person other than a corporation or limited*
7 *liability company may apply for or be issued a license.*

8 *(b) No person other than the following may be issued a license:*

9 *(1) A corporation or limited liability company organized under*
10 *the laws of this state.*

11 *(2) A corporation, other than a corporation organized under*
12 *the laws of this state, that is qualified to transact intrastate business*
13 *in this state under Chapter 21 (commencing with Section 2100) of*
14 *Division 1 of Title 1 of the Corporations Code.*

15 *(3) A limited liability company, other than a limited liability*
16 *company organized under the laws of this state, that is qualified*
17 *to transact intrastate business in this state under Chapter 10*
18 *(commencing with Section 17450) of Title 2.5 of the Corporations*
19 *Code, except that a limited liability company that is organized*
20 *outside the United States shall not be issued a license.*

21 2032. *(a) In this section, “material litigation” means litigation*
22 *that according to United States generally accepted accounting*
23 *principles is significant to an applicant’s or a licensee’s financial*
24 *health and would be required to be disclosed in the applicant’s or*
25 *licensee’s annual audited financial statements, report to*
26 *shareholders, or similar records.*

27 *(b) An applicant for licensure under this chapter shall pay to*
28 *the commissioner a nonrefundable fee of five thousand dollars*
29 *(\$5,000).*

30 *(c) An applicant for a license under this chapter shall do so in*
31 *a form and in a medium prescribed by the commissioner by order*
32 *or regulation. The application shall state or contain all of the*
33 *following:*

34 *(1) The legal name and residential business address of the*
35 *applicant and any fictitious or trade name used by the applicant*
36 *in conducting its business.*

37 *(2) A list of any criminal convictions of the applicant and any*
38 *material litigation in which the applicant has been involved in the*
39 *10-year period next preceding the submission of the application.*

1 (3) *A description of any money transmission services previously*
2 *provided by the applicant and the money transmission services*
3 *that the applicant seeks to provide in this state.*

4 (4) *A list of the applicant's proposed agents and the locations*
5 *in this state where the applicant and its agents propose to engage*
6 *in money transmission.*

7 (5) *A list of other states in which the applicant is licensed to*
8 *engage in money transmission and any license revocations,*
9 *suspensions, or other disciplinary action taken against the*
10 *applicant in another state.*

11 (6) *Information concerning any bankruptcy or receivership*
12 *proceedings affecting the licensee.*

13 (7) *A sample form of payment instrument or instrument upon*
14 *which stored value is recorded, if applicable.*

15 (8) *A sample form of receipt for transactions that involve money*
16 *received for transmission.*

17 (9) *The name and address of any bank through which the*
18 *applicant's payment instruments and stored value will be paid.*

19 (10) *A description of the source of money and credit to be used*
20 *by the applicant to provide money transmission services.*

21 (11) *The date of the applicant's incorporation or formation and*
22 *the state or country of incorporation or formation.*

23 (12) *A certificate of good standing from the state or country in*
24 *which the applicant is incorporated or formed.*

25 (13) *A description of the structure or organization of the*
26 *applicant, including any parent or subsidiary of the applicant, and*
27 *whether any parent or subsidiary is publicly traded.*

28 (14) *The legal name, any fictitious or trade name, all business*
29 *and residential addresses, and the employment, in the 10-year*
30 *period next preceding the submission of the application, of each*
31 *executive officer, manager, director, or person that has control,*
32 *of the applicant, and the education background for each such*
33 *person.*

34 (15) *A list of any criminal convictions and material litigation*
35 *in which any executive officer, manager, director, or person in*
36 *control, of the applicant has been involved in the 10-year period*
37 *next preceding the submission of the application.*

38 (16) *A copy of the applicant's audited financial statements for*
39 *the most recent fiscal year and, if available, for the two-year period*
40 *next preceding the submission of the application.*

1 (17) A copy of the applicant's unconsolidated financial
2 statements for the current fiscal year, whether audited or not, and,
3 if available, for the two-year period next preceding the submission
4 of the application.

5 (18) If the applicant is publicly traded, a copy of the most recent
6 report filed with the United States Securities and Exchange
7 Commission under Section 13 of the federal Securities Exchange
8 Act of 1934 (15 U.S.C. Sec. 78m).

9 (19) If the applicant is a wholly owned subsidiary of:

10 (A) A corporation publicly traded in the United States, a copy
11 of audited financial statements for the parent corporation for the
12 most recent fiscal year or a copy of the parent corporation's most
13 recent report filed under Section 13 of the federal Securities
14 Exchange Act of 1934 (15 U.S.C. Section 78m) and, if available,
15 for the two-year period next preceding the submission of the
16 application.

17 (B) A corporation publicly traded outside the United States, a
18 copy of similar documentation filed with the regulator of the parent
19 corporation's domicile outside the United States.

20 (20) The name and address of the applicant's registered agent
21 in this state.

22 (21) The applicant's plan for engaging in money transmission
23 business, including without limitation three years of pro forma
24 financial statements.

25 (22) Any other information the commissioner requires with
26 respect to the applicant.

27 (d) The commissioner may waive any of the information required
28 under subdivision (c) or permit an applicant to submit other
29 information instead of the required information.

30 2033. (a) The commissioner may conduct an examination of
31 the applicant and the applicant shall pay the reasonable cost of
32 the examination.

33 (b) If the commissioner finds all of the following with respect
34 to an application for a license, the commissioner shall approve
35 the application:

36 (1) The applicant has adequate tangible shareholders' equity,
37 as specified in Section 2040 to engage in the business of money
38 transmission and the financial condition of the applicant is
39 otherwise such that it will be safe and sound for the applicant to
40 engage in the business of money transmission.

1 (2) *The applicant, the directors and officers of the applicant,*
2 *any person that controls the applicant, and the directors and*
3 *officers of any person that controls the applicant are of good*
4 *character and sound financial standing.*

5 (3) *The applicant is competent to engage in the business of*
6 *money transmission.*

7 (4) *The applicant's plan for engaging in the business of money*
8 *transmission affords reasonable promise of successful operation.*

9 (5) *It is reasonable to believe that the applicant, if licensed, will*
10 *engage in the business of money transmission and will comply*
11 *with all applicable provisions of this chapter and of any regulation*
12 *or order issued under this chapter.*

13 (c) *The commissioner shall deny an application for a license if*
14 *he or she finds, after notice and a hearing, that the requirements*
15 *of subdivision (b) have not been satisfied.*

16 2034. (a) *Before any corporation or limited liability company*
17 *is issued a license, the corporation or limited liability company*
18 *shall file with the commissioner, in such form as the commissioner*
19 *may by regulation or order require, an appointment irrevocably*
20 *appointing the commissioner to be the corporation's or limited*
21 *liability company's attorney to receive service of any lawful*
22 *process in any noncriminal judicial or administrative proceeding*
23 *against the corporation or limited liability company, or any of its*
24 *successors, that arises under this chapter or under any regulation*
25 *or order issued under this chapter after such appointment has been*
26 *filed, with the same force and validity as if served personally on*
27 *the corporation or limited liability company or its successor, as*
28 *the case may be.*

29 (b) *Service may be made by leaving a copy of the process at*
30 *any office of the commissioner, but that service is not effective*
31 *unless (1) the party making that service, who may be the*
32 *commissioner, sends notice of service and a copy of the process*
33 *by registered or certified mail to the party served at its last address*
34 *on file with the commissioner, and (2) an affidavit of compliance*
35 *with this section by the party making service is filed in the case*
36 *on or before the return date, if any, or within such further time as*
37 *the court, in the case of a judicial proceeding, or the administrative*
38 *agency, in the case of an administrative proceeding, allows.*

39 (c) *The provisions of this section are in addition to, and not in*
40 *limitation of, other provisions of law relating to service of process.*

1 2035. (a) *No person shall, directly or indirectly, acquire*
2 *control of a licensee unless the commissioner has first approved,*
3 *in writing, the acquisition of control. An application to acquire*
4 *control of a licensee shall be in writing, under oath, and in a form*
5 *prescribed by the commissioner. The application shall contain*
6 *that information which the commissioner may require.*

7 (b) *The commissioner shall not approve the application unless*
8 *the commissioner finds all of the following:*

9 (1) *The applicant and all of the officers and directors of the*
10 *applicant are of good character and sound financial standing.*

11 (2) *The applicant is competent to engage in the business of*
12 *money transmission.*

13 (3) *It is reasonable to believe that, if the applicant acquires*
14 *control of the licensee, the applicant and the licensee will comply*
15 *with all applicable provisions of this chapter and any regulation*
16 *or order issued under this chapter.*

17 (4) *The applicant's plans, if any, to make any major change in*
18 *the business, corporate structure, or management of the licensee*
19 *are not detrimental to the safety and soundness of the licensee.*

20 (c) *For the purposes of subdivision (b), the commissioner may*
21 *find an applicant's plan to make major changes in the management*
22 *of a licensee is detrimental to the licensee if the plan provides for*
23 *a person who is not of good character to become a director or*
24 *officer of the licensee. The grounds specified in this subdivision*
25 *shall not be deemed to be the only grounds upon which the*
26 *commissioner may find, for the purposes of subdivision (b), that*
27 *an applicant's plan to make a major change in the management*
28 *of a licensee is detrimental to the licensee.*

29 (d) *If it appears to the commissioner that any person is violating*
30 *or failing to comply with this section, the commissioner may direct*
31 *the person to comply with this section by an order issued over the*
32 *commissioner's official seal.*

33 (e) *Whenever it appears to the commissioner that any person*
34 *has committed or is about to commit a violation of any provision*
35 *of this section or of any regulation or order of the commissioner*
36 *issued pursuant to this section, the commissioner may apply to the*
37 *superior court for an order enjoining the person from violating*
38 *or continuing to violate this section or that regulation or order,*
39 *and for other equitable relief as the nature of the case or interests*
40 *of the licensee, the controlling person, the creditors or*

1 *shareholders of the licensee or controlling person or the public*
2 *may require.*

3 *(f) The commissioner may, for good cause, amend, alter,*
4 *suspend, or revoke any approval of a proposal to acquire control*
5 *of a licensee issued pursuant to this section.*

6 *(g) There shall be exempted from the provisions of this section*
7 *any transaction which the commissioner by regulation or order*
8 *exempts as not being comprehended within the purposes of this*
9 *section and the regulation of which he or she finds is not necessary*
10 *or appropriate in the public interest or for the protection of a*
11 *licensee or the customers of a licensee.*

12 *(h) The commissioner may conduct an examination of the*
13 *applicant and the applicant shall pay the reasonable cost of the*
14 *examination.*

15 *2036. The commissioner may impose on any authorization,*
16 *approval, license, or order issued pursuant to this chapter any*
17 *conditions that he or she deems reasonable or necessary to the*
18 *public interest.*

19 *2037. (a) As security, each licensee shall deposit and thereafter*
20 *maintain on deposit with the Treasurer cash in an amount not less*
21 *than, or securities having a market value not less than, such*
22 *amount as the commissioner may find and order from time to time*
23 *as necessary to secure the faithful performance of the obligations*
24 *of the licensee with respect to money transmission in California.*
25 *These securities shall be subject to the approval of the*
26 *commissioner and shall consist of interest-bearing bonds, notes,*
27 *or other obligations of the United States or any agency or*
28 *instrumentality thereof, or of the State of California, or of any city,*
29 *county, or city and county, political subdivision or district of the*
30 *State of California, or that are guaranteed by the United States*
31 *or the State of California.*

32 *(b) So long as a licensee that maintains securities on deposit*
33 *with the Treasurer pursuant to this section is solvent, that licensee*
34 *shall be entitled to receive any interest paid on the securities.*

35 *(c) In lieu of the deposit of cash or securities pursuant to*
36 *subdivision (a), a licensee may deliver to the commissioner the*
37 *bond of a surety company, in form and written by a company*
38 *satisfactory to the commissioner, in an amount not less than the*
39 *amount of the deposit of cash or securities required of the licensee,*
40 *conditioned upon the faithful performance of the obligations of*

1 *the licensee with respect to money transmission in California. The*
2 *commissioner shall deposit such bond with the Treasurer.*

3 *(d) A licensee that sells or issues payment instruments or stored*
4 *value shall maintain securities on deposit or a bond of a surety*
5 *company in an amount of no less than five hundred thousand*
6 *dollars (\$500,000) or 50 percent of the average daily outstanding*
7 *payment instrument and stored value obligations in California,*
8 *whichever is greater; provided that such amount shall not be more*
9 *than two million dollars (\$2,000,000).*

10 *(e) A licensee that engages in receiving money for transmission*
11 *shall maintain securities on deposit or a bond of a surety company*
12 *in an amount greater than the average daily outstanding*
13 *obligations for money received for transmission in California,*
14 *provided that such amount shall not be less than two hundred fifty*
15 *thousand dollars (\$250,000) nor more than seven million dollars*
16 *(\$7,000,000).*

17 *(f) The amount of securities on deposit or a bond of a surety*
18 *company required to be maintained by subdivisions (d) and (e)*
19 *are cumulative.*

20 *(g) The money and securities deposited with the State Treasurer*
21 *pursuant to this section and the proceeds of any bond held by the*
22 *State Treasurer pursuant to this section shall constitute a trust*
23 *fund for the benefit of persons in California who purchased*
24 *payment instruments or stored value from the licensee or its agent,*
25 *or persons in California who delivered to any licensee or its agent*
26 *money or monetary value for money transmission. Suit to recover*
27 *on any bond may be brought by any party aggrieved in a court of*
28 *competent jurisdiction of any county in which the licensee has an*
29 *agent.*

30 *(h) Securities on deposit or a bond shall cover claims for so*
31 *long as the commissioner specifies, but for at least four years after*
32 *the licensee ceases to provide services under this chapter in this*
33 *state. However, the commissioner may permit the amount of the*
34 *security to be reduced or eliminated before the expiration of that*
35 *time to the extent the amount of the licensee's payment instruments*
36 *or stored value obligations outstanding, or outstanding money or*
37 *monetary value received for money transmission, is less than the*
38 *deposit or bond. The commissioner may permit a licensee to*
39 *substitute another form of security acceptable to the commissioner*

1 *for the security effective at the time the licensee ceases to provide*
2 *money transmissions in this state.*

3 2038. *Fees shall be paid to, and collected by, the commissioner,*
4 *as follows:*

5 (a) *The fee for filing an application for a license is five thousand*
6 *dollars (\$5,000), as provided in subdivision (b) of Section 2032.*

7 (b) *The fee for filing an application for approval to acquire*
8 *control of a licensee is three thousand five hundred dollars*
9 *(\$3,500).*

10 (c) *A licensee shall pay annually on or before July 1, a licensee*
11 *fee of two thousand five hundred dollars (\$2,500).*

12 (d) *A licensee shall pay annually on or before July 1, one*
13 *hundred twenty-five dollars (\$125) for each licensee branch office*
14 *in this state.*

15 (e) *A licensee shall pay annually on or before July 1, twenty-five*
16 *dollars (\$25) for each agent branch office in this state.*

17 (f) *Whenever the commissioner examines a licensee or any agent*
18 *of a licensee, the licensee shall pay, within 10 days after receipt*
19 *of a statement from the commissioner, a fee of seventy-five dollars*
20 *(\$75) per hour for each examiner engaged in the examination plus,*
21 *if it is necessary for any examiner engaged in the examination to*
22 *travel outside this state, the travel expenses of the examiner.*

23 (g) *Whenever the commissioner examines an applicant, the*
24 *applicant shall pay, within 10 days after receipt of a statement*
25 *from the commissioner, a fee of seventy-five dollars (\$75) per hour*
26 *for each examiner engaged in the examination plus, if it is*
27 *necessary for any examiner engaged in the examination to travel*
28 *outside this state, the travel expenses of the examiner.*

29 (h) *Each fee for filing an application shall be paid at the time*
30 *the application is filed with the commissioner. No fee for filing an*
31 *application shall be refundable, regardless of whether the*
32 *application is approved, denied, or withdrawn.*

33 2039. (a) *The commissioner may by order or regulation grant*
34 *exemptions from this section in cases where the commissioner*
35 *finds that the requirements of this section are not necessary or*
36 *may be duplicative.*

37 (b) *In addition to such other reports as may be required*
38 *pursuant to Sections 453, 454, and 455, each licensee shall, within*
39 *90 days after the end of each fiscal year, or within such extended*
40 *time as the commissioner may prescribe, file with the commissioner*

1 *an audit report for the fiscal year that shall comply with all of the*
2 *following provisions:*

3 *(1) The audit report shall contain audited financial statements*
4 *of the licensee for or as of the end of the fiscal year prepared in*
5 *accordance with United States generally accepted accounting*
6 *principles and such other information as the commissioner may*
7 *require.*

8 *(2) The audit report shall be based upon an audit of the licensee*
9 *conducted in accordance with United States generally accepted*
10 *auditing standards and such other requirements as the*
11 *commissioner may prescribe.*

12 *(3) The audit report shall be prepared by an independent*
13 *certified public accountant or independent public accountant who*
14 *is not unsatisfactory to the commissioner.*

15 *(4) The audit report shall include or be accompanied by a*
16 *certificate of opinion of the independent certified public accountant*
17 *or independent public accountant that is satisfactory in form and*
18 *content to the commissioner. If the certificate or opinion is*
19 *qualified, the commissioner may order the licensee to take such*
20 *action as the commissioner may find necessary to enable the*
21 *independent or certified public accountant or independent public*
22 *accountant to remove the qualification.*

23 *(c) Each licensee shall, not more than 45 days after the end of*
24 *each calendar year quarter, or within a longer period as the*
25 *commissioner may by regulation or order specify, file with the*
26 *commissioner a report containing all of the following:*

27 *(1) Financial statements, including balance sheet, income*
28 *statement, statement of changes in shareholders' equity, and*
29 *statement of cashflows, for, or as of the end of, that calendar year*
30 *quarter, verified by two of the licensee's principal officers. The*
31 *verification shall state that each of the officers making the*
32 *verification has a personal knowledge of the matters in the report*
33 *and that each of them believes that each statement on the report*
34 *is true.*

35 *(2) For issuers and sellers of payment instruments and stored*
36 *value, a schedule of eligible securities owned by the licensee*
37 *pursuant to Section 2081.*

38 *(3) Other information as the commissioner may by regulation*
39 *or order require.*

1 (d) Each licensee, not more than 45 days after the end of each
2 calendar year quarter, shall file with the commissioner a report
3 containing all of the following:

4 (1) The current address of each branch office of the licensee in
5 this state. If a branch office was opened or closed during the
6 calendar year quarter, the date it was opened or closed. If a branch
7 office was relocated during the calendar year quarter, the
8 addresses of the old and new locations and the date of relocation.

9 (2) The name of each person who acted as an agent in this state
10 of the licensee during the calendar year quarter and the address
11 for each agent branch office. If a person was appointed or
12 terminated as an agent during the calendar year quarter, the date
13 of appointment or termination. If an agent branch office relocated,
14 the addresses for the old and new locations and the date of
15 relocation.

16 (3) The total volume of activities, number of transactions
17 conducted, and outstanding money transmission obligations in
18 California under this chapter and in the United States in the
19 calendar year quarter categorized by type of money transmission.
20 For money received for transmission, a report of the average daily
21 outstanding transmission liabilities in California, and, if
22 applicable, a schedule of each foreign country to which money
23 was sent, along with the total amount of money sent to that foreign
24 country in that calendar year quarter. For payment instruments
25 and stored value, a report of the average daily outstanding payment
26 instruments and stored value liabilities in California in that
27 calendar year quarter.

28 (4) Other information as the commissioner may by regulation
29 or order require.

30 (e) Each licensee shall file with the commissioner other reports
31 as and when the commissioner may by regulation or order require.

32 2040. (a) A licensee under this chapter shall maintain tangible
33 shareholders' equity in an amount determined to be adequate by
34 the commissioner from time to time, but in no event shall tangible
35 shareholders' equity be less than five hundred thousand dollars
36 (\$500,000). "Tangible shareholders' equity" means shareholders'
37 or members' equity minus intangible assets as determined in
38 accordance with United States generally accepted accounting
39 principles.

1 (b) The commissioner at any time may require a licensee to
2 write down any asset held by it to a valuation that will represent
3 its then fair market value. Any receivable or debt due to a licensee
4 that is past due and unpaid for the period of one year shall be
5 charged off, unless it is well secured or is in process of collection.

6 (c) The aggregate value of a licensee's accounts receivable,
7 excluding money transmission receivables, loans or extensions of
8 credit to any one person, or that person's affiliates, cannot exceed
9 50 percent of the licensee's tangible shareholders' equity without
10 the advanced written approval of the commissioner. Whenever
11 such amount equals or exceeds 20 percent of the licensee's tangible
12 shareholders' equity, the licensee shall maintain records
13 evidencing such amount and any security or other source of
14 payment for the amount owed, and such other records as the
15 commissioner may require by order or regulation.

16 2041. (a) A licensee shall conduct money transmission in
17 California under its true name unless it has complied with Chapter
18 5 (commencing with Section 17900) of Part 3 of Division 7 of the
19 Business and Professions Code.

20 (b) A licensee may only conduct money transmission in
21 California under its true name unless it has provided 30-day
22 advance written notice to the commissioner. A licensee may also
23 use a trade name or logo, so long as there is reasonable disclosure
24 of its true name.

25 2042. (a) In addition to the fees provided in Section 2038, the
26 commissioner shall levy an assessment each fiscal year, on a pro
27 rata basis, on those licensees that at any time during the preceding
28 calendar year engaged in the business of money transmission in
29 California in an amount that is, in his or her judgment, sufficient
30 to meet the commissioner's expenses in administering the
31 provisions of this chapter and to provide a reasonable reserve for
32 contingencies.

33 (b) For licensees that sell or issue payment instruments or stored
34 value, the amount of the annual assessment on any licensee shall
35 not exceed the sum of the products determined by multiplying (1)
36 increments of the aggregate face amount of payment instruments
37 and stored value issued or sold in California by the licensee,
38 directly or indirectly through agents, in the calendar year next
39 preceding the date of such assessment, by (2) percentages of the
40 base assessment rate, according to the following table:

1	Aggregate face amount of payment instruments	Percentage of base
2	and stored value sold (in millions)	assessment rate
3	First \$ 1.....	100.0
4	Next \$9.....	25.0
5	Next \$40.....	12.5
6	Next \$50.....	6.0
7	Next \$400.....	3
8	Next \$500.....	2
9	Excess over \$1,000.....	1

10
 11 *The base assessment rate shall be fixed from time to time by the*
 12 *commissioner but shall not exceed one dollar (\$1) per one thousand*
 13 *dollars (\$1,000) face amount of payment instruments and stored*
 14 *value sold.*

15 *(c) For licensees receiving money for transmission, the basis*
 16 *of the apportionment of the assessment among the licensees*
 17 *assessed shall be the proportion that the total amount of money*
 18 *received for transmission by the licensee in California bears in*
 19 *relation to the total amount of money received for transmission*
 20 *by all licensees in California, as shown by the reports of licensees*
 21 *to the commissioner for the preceding calendar year. The*
 22 *assessment rate shall be fixed from time to time by the*
 23 *commissioner but shall not exceed one dollar (\$1) per one thousand*
 24 *dollars (\$1,000) of money received for transmission in California*
 25 *by the licensee.*

26 *(d) The commissioner shall notify each licensee by mail of the*
 27 *amount levied against it. The licensee shall pay the amount levied*
 28 *within 20 days. If payment is not made to the commissioner within*
 29 *that time, the commissioner shall assess and collect, in addition*
 30 *to the annual assessment, a penalty of 5 percent of the assessment*
 31 *for each month or part thereof that the payment is delinquent.*

32
 33 *CHAPTER 4. AGENTS*
 34

35 2060. *(a) In this section, “remit” means to make direct*
 36 *payments of money to a licensee or its representative authorized*
 37 *to receive money or to deposit money in a bank in an account*
 38 *specified by the licensee.*

39 *(b) No licensee shall appoint or continue any person as agent,*
 40 *unless the licensee and the person have made a written contract.*

1 *A written contract between a licensee and an agent shall require*
2 *the agent to operate in full compliance with this chapter.*

3 *(c) The written contract shall contain each of the following*
4 *provisions:*

5 *(1) That the licensee appoints the person as its agent with*
6 *authority to conduct money transmission on behalf of the licensee.*

7 *(2) That the agent shall make and keep accounts,*
8 *correspondence, memoranda, papers, books, and other records*
9 *as the commissioner by regulation or order requires and preserve*
10 *the records for the time specified by the regulation or order.*

11 *(3) That all money or monetary value, less fees due agents*
12 *provided for and expressly set forth in the written agreement,*
13 *received by the agent for money transmission on behalf of the*
14 *licensee shall be trust funds owned by and belonging to the licensee*
15 *until the time when the money or an equivalent amount are remitted*
16 *by the agent to the licensee in accordance with this section.*

17 *(4) That the money must be remitted in accordance with the*
18 *provisions of this chapter.*

19 *(5) Any other provisions that the commissioner may by*
20 *regulation or order find to be necessary to carry out the provisions*
21 *and purposes of this chapter.*

22 *(d) An agent shall remit all money owing to the licensee in*
23 *accordance with the terms of the contract between the licensee*
24 *and the agent.*

25 *(e) An agent of a licensee shall remit any money, less fees,*
26 *received on behalf of the licensee for money transmission as*
27 *follows:*

28 *(1) Within three business days of receipt.*

29 *(2) In case the aggregate face amount of the money, less fees,*
30 *does not in any calendar week exceed ten thousand dollars*
31 *(\$10,000), within 10 business days of receipt.*

32 *(3) Within a period longer than three business days of receipt,*
33 *if the agent has previously deposited with, and during such period*
34 *maintains on deposit with, an office of an insured bank or of an*
35 *insured savings and loan association located in the United States*
36 *in an account that is in the sole and exclusive name of the licensee*
37 *an amount that, for each day by which such period exceeds three*
38 *business days, is not less than the aggregate face amount of money*
39 *received on behalf of the licensee for money transmission that the*
40 *agent usually sells per day.*

1 (4) *Within such shorter period as the licensee may provide.*

2 (f) *An agent may not provide money transmission outside the*
3 *scope of activity permissible under the contract between the agent*
4 *and the licensee. All money or monetary value, less fees, received*
5 *by an agent of a licensee shall, from the time when the money is*
6 *received by the agent until the time when the money or an*
7 *equivalent amount is remitted by the agent to the licensee,*
8 *constitute trust funds owned by and belonging to the licensee.*

9 (g) *An agent may not use a subagent to conduct money*
10 *transmissions on behalf of a licensee.*

11 (h) *Each licensee shall exercise reasonable supervision over*
12 *its agents to ensure compliance with applicable laws, rules, and*
13 *regulations with respect to money transmission.*

14 (i) *No agent of a licensee shall, nor shall any licensee cause or*
15 *knowingly permit any of its agents to, conduct money transmission*
16 *on behalf of the licensee without concurrently receiving money,*
17 *monetary value or its equivalent, credit card, or payment*
18 *instrument, or a combination of same believed to be valid in an*
19 *amount not less than the amount of the money transmission being*
20 *provided. In the case of a sale of payment instruments or stored*
21 *value to an insured bank, an insured savings and loan association,*
22 *or an insured credit union, the licensee or agents of the licensee*
23 *may receive such amounts the next business day after the sale.*

24 (j) *If any agent of a licensee shall commingle any money or*
25 *monetary value, less fees, received on behalf of the licensee for*
26 *money transmission with any other property owned or controlled*
27 *by the agent, all such property shall be impressed with a trust in*
28 *favor of the licensee in an amount equal to the aggregate amount*
29 *of such money so commingled. No money or monetary value, less*
30 *fees, received by any agent on behalf of the licensee for money*
31 *transmission, while held by such agent, nor any property impressed*
32 *with a trust pursuant to this subdivision, shall be subject to*
33 *attachment, levy of execution, or sequestration by order of any*
34 *court, except for the benefit of the licensee.*

35 (k) *Each licensee shall be liable as a principal for the money*
36 *or monetary value from the time when the money or monetary*
37 *value is received by the agent. Each licensee shall be liable as the*
38 *maker or drawer on each payment instrument issued or sold by*
39 *such licensee.*

1 2061. (a) No licensee shall appoint any person as an agent
2 unless it has conducted a review of the proposed agent's fitness
3 to act as an agent and has determined that the proposed agent and
4 any persons who control the proposed agent are of good character
5 and sound financial standing.

6 (b) A licensee shall maintain records of this review for each
7 agent while the agent is providing money transmission on behalf
8 of the licensee, and for three years after the relationship with the
9 agent has terminated.

10 2062. A person may not provide money transmissions on behalf
11 of a person not licensed or not exempt from licensure under this
12 chapter. A person that engages in that activity provides money
13 transmissions services to the same extent as if the person was a
14 licensee, and shall be jointly and severally liable with the
15 unlicensed or nonexempt person.

16 2063. (a) No agent of a licensee who has actual notice that
17 the commissioner has suspended or revoked the license of the
18 licensee or that the commissioner has issued an order taking
19 possession of the property and business of the licensee shall
20 conduct money transmission on behalf of the licensee.

21 (b) If any agent of a licensee, after first having actual notice
22 that the commissioner has suspended or revoked the license of the
23 licensee or that the commissioner has issued an order taking
24 possession of the property and business of the licensee, conducts
25 money transmission on behalf of the licensee, the agent shall be
26 jointly and severally liable with the licensee for payment of the
27 money transmission.

28
29 *CHAPTER 5. ELIGIBLE SECURITIES*
30

31 2081. (a) A licensee shall at all times own eligible securities
32 having an aggregate market value computed in accordance with
33 United States generally accepted accounting principles of not less
34 than the aggregate amount of all of its outstanding payment
35 instruments and stored value obligations issued or sold in the
36 United States and all outstanding money received for transmission
37 in the United States.

38 (b) If the commissioner finds that the financial condition of a
39 licensee is impaired, or that the financial condition of a licensee
40 is such that its business is being conducted in an unsafe and

1 *unsound manner, the commissioner, to protect the public interest,*
2 *may issue an order, subject to the procedures set forth in Section*
3 *2148, doing one or both of the following:*

4 *(1) Increasing the amount of eligible securities that the licensee*
5 *must maintain.*

6 *(2) Requiring the licensee to obtain, as security for the payment*
7 *of outstanding money transmission obligations, additional security*
8 *in the form of financial guarantees.*

9 *(c) Eligible securities, even if commingled with other assets of*
10 *the licensee, are deemed to be held in trust for the benefit of the*
11 *purchasers and holders of the licensee's outstanding payment*
12 *instrument and stored value obligations, and all senders of*
13 *outstanding money received for transmission, in the event of*
14 *bankruptcy or receivership of the licensee, or in the event of an*
15 *action by a creditor against the licensee who is not a beneficiary*
16 *of this statutory trust. No eligible securities impressed with a trust*
17 *pursuant to this subdivision shall be subject to attachment, levy*
18 *of execution, or sequestration by order of any court, except for a*
19 *beneficiary of this statutory trust.*

20 *(d) All outstanding payment instruments and stored value issued*
21 *or sold by a licensee or its agent, and all outstanding money*
22 *received for transmission by a licensee or its agent, shall remain*
23 *a liability of the licensee from the time money or monetary value*
24 *is received by the licensee or its agent until the licensee receives*
25 *confirmation that such money or monetary value was received by*
26 *the beneficiary, or until the outstanding payment instrument or*
27 *stored value obligation has been paid, or until the money is*
28 *refunded to the customer.*

29 *(e) A licensee shall maintain a record in the United States of*
30 *proof of receipt by the beneficiary or refund to the customer of*
31 *money received for transmission.*

32 2082. *(a) "Eligible security" means any United States currency*
33 *eligible security or foreign currency eligible security.*

34 *(b) For the purposes of this chapter, the following are United*
35 *States currency eligible securities:*

36 *(1) Cash.*

37 *(2) Any deposit in an insured bank or an insured savings and*
38 *loan association or insured credit union.*

39 *(3) Any bond, note, or other obligation that is issued or is*
40 *guaranteed by the United States or any agency of the United States.*

1 (4) Any bond, note, or other obligation that is issued or
2 guaranteed by any state of the United States or by any
3 governmental agency of or within any state of the United States
4 and that is assigned an eligible rating by an eligible securities
5 rating service.

6 (5) Any bankers acceptance that is eligible for discount by a
7 federal reserve bank.

8 (6) Any commercial paper that is assigned an eligible rating by
9 an eligible rating securities service.

10 (7) Any bond, note, or other obligation that is assigned an
11 eligible rating by an eligible securities rating service.

12 (8) Any share of an investment company that is an open-end
13 management company, that is registered under the Investment
14 Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.), that holds
15 itself out to investors as a money market fund, and that operates
16 in accordance with all provisions of the Investment Company Act
17 of 1940, and the regulations of the Securities and Exchange
18 Commission applicable to money market funds, including Section
19 270.2a-7 of the regulations of the Securities and Exchange
20 Commission (17 C.F.R. Sec. 270.2a-7).

21 For purposes of this paragraph and paragraph (9), “investment
22 company,” “management company,” and “open-end” have the
23 meanings set forth in Sections 3, 4, and 5, respectively, of the
24 Investment Company Act of 1940 (15 U.S.C. Secs. 80a-4, and
25 80a-5, respectively).

26 (9) Any share of an investment company that is an open-end
27 management company, that is registered under the Investment
28 Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and that
29 invests exclusively in securities that constitute eligible securities
30 that comply with valuation requirements of this chapter.

31 (10) Any account due to any licensee from any agent in the
32 United States on account of the receipt of money on behalf of the
33 licensee for money transmission by the agent, if the account is
34 current and not past due or otherwise doubtful of collection.

35 (11) Any other security or class of securities that the
36 commissioner has by regulation or order declared to be eligible
37 securities.

38 (c) “Foreign currency eligible security” means any of the
39 following that is denominated in a foreign currency:

40 (1) Cash.

1 (2) Any deposit in an office of a bank acceptable to the
2 commissioner that is located in a foreign country.

3 (3) Any other security or class of securities that the
4 commissioner has by regulation or order declared to be eligible
5 securities pursuant to Section 2086.

6 (d) For the purposes of this chapter, “value” means the
7 following:

8 (1) When used with respect to an eligible security owned by a
9 licensee of the type described in paragraph (10) of subdivision
10 (b), net carrying value as determined in conformity with United
11 States generally accepted accounting principles. However, in
12 computing the value of the account, any amount that consists of
13 money that has not been remitted to the licensee or refunded within
14 45 business days of receipt by the agent shall be excluded from
15 the value of the account and shall be excluded from the calculation
16 of eligible securities.

17 (2) Market value when used with respect to any other eligible
18 security owned by a licensee.

19 2083. (a) In computing for purposes of Section 2082 the
20 aggregate value of eligible securities owned by a licensee, all of
21 the following shall be excluded:

22 (1) The value of any eligible security if and to the extent that
23 the value of the eligible security, when combined with the
24 aggregate value of all other eligible securities owned by the
25 licensee that are issued or guaranteed by the same person or by
26 any affiliate of the same person by whom the eligible security is
27 issued or guaranteed, exceeds 10 percent of the aggregate value
28 of all eligible securities owned by the licensee.

29 (2) The portion of the aggregate value of all eligible securities
30 of the type described in paragraph (10) of subdivision (b) of
31 Section 2082 that exceeds 25 percent of the aggregate value of all
32 eligible securities owned by the licensee; and that portion of the
33 aggregate value of agent receivables from any one person that
34 exceeds 10 percent of the aggregate value of all eligible securities
35 owned by the licensee, or any higher percentage that the
36 commissioner may approve for the licensee, up to a maximum of
37 20 percent.

38 (3) The portion of the aggregate value of all eligible securities
39 of the type described in paragraph (6) of subdivision (b) of Section

1 2082 that exceeds 20 percent of the aggregate value of all eligible
2 securities owned by the licensee.

3 (4) The portion of the aggregate value of all eligible securities
4 of the type described in paragraph (7) of subdivision (b) of Section
5 2082 that exceeds 20 percent of the aggregate value of all eligible
6 securities owned by the licensee.

7 (5) The portion of the aggregate value of all eligible securities
8 of the type described in paragraph (8) of subdivision (b) of Section
9 2082, except for a money market fund that invests exclusively in
10 obligations issued or guaranteed by the United States or any
11 agency of the United States, that exceeds 20 percent of the
12 aggregate value of all eligible securities owned by the licensee.

13 (6) The portion of the aggregate value of all eligible securities
14 of the type described in paragraphs (6), (7), and (8) of subdivision
15 (b) of Section 2082 that exceeds 50 percent of the aggregate value
16 of all eligible securities owned by the licensee.

17 (b) Subdivision (a) shall not be deemed to require the exclusion
18 of the value of any of the following eligible securities, and each
19 of the following eligible securities shall be exempted from the
20 limitations of subdivision (a):

21 (1) The following eligible securities:

22 (A) Cash.

23 (B) Any deposit in an insured bank, insured savings and loan
24 association, or insured credit union.

25 (C) Any bond, note, or other obligation for the payment of which
26 the full faith and credit of the United States are pledged.

27 (2) Any eligible security that the commissioner, in view of the
28 financial condition of the obligor or issuer and such other factors
29 as may in the opinion of the commissioner be relevant, finds to be
30 of such quality that exclusion of the value of such eligible security
31 pursuant to subdivision (a) is not necessary for the purposes of
32 this chapter and which the commissioner by regulation or order
33 exempts, in whole or in part, from the limitations of subdivision
34 (a).

35 2084. (a) A licensee shall be deemed to own an eligible
36 security only if the following apply:

37 (1) The licensee owns the eligible security solely and exclusively
38 in its own right, both of record and beneficially.

39 (2) The eligible security is not subject to any pledge, lien, or
40 security interest.

1 (3) *The licensee can freely negotiate, assign, or otherwise*
2 *transfer the eligible security.*

3 (b) *Notwithstanding subdivision (a), no licensee shall be deemed*
4 *not to own an eligible security solely on account of any of the*
5 *following facts, provided that, but for that fact, the licensee would*
6 *be deemed to own the eligible security under the provisions of*
7 *subdivision (a):*

8 (1) *The fact that the eligible security is owned of record by a*
9 *documented nominee of the licensee or by a securities depository.*

10 (2) *The fact that the licensee has pledged the eligible security*
11 *with the United States or any state of the United States to secure*
12 *payment by the licensee of transmission money.*

13 2085. *If the commissioner finds that any eligible security or*
14 *class of eligible securities is not of sufficient liquidity or quality*
15 *to be eligible securities, the commissioner may by regulation or*
16 *order declare the security or class of securities to be ineligible.*

17 2086. *If the commissioner finds that any security or class of*
18 *securities that is not an eligible security is of sufficient liquidity*
19 *and quality to be an eligible security, the commissioner may by*
20 *regulation or order declare the security or class of securities to*
21 *be eligible securities.*

22 2087. (a) *If the commissioner finds that a rating assigned to*
23 *a class of securities by an eligible securities rating service indicates*
24 *that the class of securities is of sufficient quality to be eligible*
25 *securities, the commissioner may by regulation or order declare*
26 *the rating to be an eligible rating.*

27 (b) *With respect to this chapter “eligible rating” means any*
28 *rating assigned to such security or class of securities by such*
29 *eligible securities rating service which the commissioner has by*
30 *regulation or order declared to be an eligible rating.*

31 2088. (a) *The commissioner may by regulation or order*
32 *declare a securities rating service to be an eligible securities rating*
33 *service if the commissioner finds the following with respect to the*
34 *securities rating service:*

35 (1) *It has been continuously engaged in the business of rating*
36 *securities for a period of not less than three years.*

37 (2) *It is competent to rate securities and is nationally recognized*
38 *for rating securities in a competent manner.*

39 (3) *It publishes its ratings of securities on a nationwide basis.*

1 (b) With respect to this chapter “eligible securities rating
2 service” means any securities rating service that the commissioner
3 by regulation or order declared to be an eligible securities ratings
4 service.

5 2089. A licensee shall maintain eligible securities that are
6 adequately diversified, predominantly of a duration commensurate
7 with the licensee’s outstanding money transmission obligations,
8 and of sufficient liquidity and quality to promptly pay the
9 outstanding money transmission obligations of the licensee.

10
11 *CHAPTER 6. CONSUMER DISCLOSURES*
12

13 2100. (a) (1) Each licensee shall file with the commissioner
14 a certified copy of every receipt form used by it or by its agent for
15 receiving money for transmission prior to its first use. No licensee
16 or its agent shall use any receipt, a certified copy of which has not
17 been filed with the commissioner, or use a receipt that the
18 commissioner has deemed not to be in compliance pursuant to
19 paragraph (2).

20 (2) If the commissioner determines, within 30 business days of
21 the filing date of a receipt, that the receipt does not comply with
22 the requirements of this section or Sections 2102 and 2103, the
23 commissioner shall notify the licensee in writing that the receipt
24 is not in compliance with those requirements.

25 (b) Notwithstanding subdivision (a), before a new licensee issues
26 its first receipt to a customer, it shall file with the commissioner
27 a certified copy of the receipt forms to be used by it or its agents
28 for receiving money for transmission. The new licensee shall not
29 use the receipt forms until approved by the commissioner. For
30 purposes of this subdivision, a new licensee is a licensee that has
31 not been previously licensed by the commissioner as a money
32 transmitter or has not previously received money for transmission
33 in California.

34 (c) If a receipt is required by this chapter to be in English and
35 another language, the English version of the receipt shall govern
36 any dispute concerning the terms of the receipt. However, any
37 discrepancies between the English version and any other version
38 due to the translation of the receipt from English to another
39 language including errors or ambiguities shall be construed

1 *against the licensee or its agent and the licensee or its agent shall*
2 *be liable for any damages caused by these discrepancies.*

3 *(d) Any licensee violating the requirements of this section shall*
4 *be subject to a fine of fifty dollars (\$50) for each violation. This*
5 *provision is in addition to any other enforcement provisions that*
6 *may apply to such a violation.*

7 *(e) If any licensee or its agent uses a receipt form, a certified*
8 *copy of which has not been filed with the commissioner, the*
9 *licensee shall be liable for the acts of its agent whether or not the*
10 *licensee authorized the agent to use that form.*

11 *(f) The receipt form shall comply with the requirements of*
12 *Sections 2102 and 2103.*

13 *2101. Every licensee or its agent shall forward all money*
14 *received for transmission or give instructions committing*
15 *equivalent money to the person designated by the customer within*
16 *10 days after receiving that money, unless otherwise ordered by*
17 *his or her customer.*

18 *2102. (a) Every licensee or its agent shall refund to the*
19 *customer within 10 days of receipt of the customer's written request*
20 *for a refund any and all money received for transmission unless*
21 *any of the following occurs:*

22 *(1) The money has been forwarded within 10 days of the date*
23 *of receipt.*

24 *(2) Instructions have been given committing an equivalent*
25 *amount of money to the person designated by the customer within*
26 *10 days of the date of the receipt of the money from the customer.*

27 *(3) The customer instructs the licensee to transmit the money*
28 *at a time beyond 10 days. If the customer gives instructions as to*
29 *when the money shall be forwarded or transmitted and the moneys*
30 *have not yet been forwarded or transmitted, the licensee or its*
31 *agent shall refund the customer's money within 10 days of receipt*
32 *of the customer's written request for a refund.*

33 *(4) Refund would violate law.*

34 *(b) In the case of money received for transmission, a receipt*
35 *shall be provided by a licensee or its agent to all customers which*
36 *shall be made available to the customer in English and in the*
37 *language principally used by that licensee or that agent to*
38 *advertise, solicit, or negotiate, either orally or in writing, at that*
39 *branch office if other than English. The receipt shall either include*
40 *or have attached a conspicuous statement in English and in the*

1 *language principally used by the licensee or that agent to advertise,*
2 *solicit, or negotiate, either orally or in writing at that branch office*
3 *if other than English in a size equal to at least 10 point bold type,*
4 *as follows:*

5
6 **RIGHT TO REFUND**

7
8 *“You, the customer, are entitled to a refund of the money to be transmitted as*
9 *the result of this agreement if _____ (name of licensee) does not forward the*
10 *money received from you within 10 days of the date of its receipt, or does not*
11 *give instructions committing an equivalent amount of money to the person*
12 *designated by you within 10 days of the date of the receipt of the funds from*
13 *you unless otherwise instructed by you.*

14
15 *If your instructions as to when the moneys shall be forwarded or transmitted*
16 *are not complied with and the money has not yet been forwarded or transmitted,*
17 *you have a right to a refund of your money.*

18
19 *If you want a refund, you must mail or deliver your written request to _____*
20 *(name of licensee) at _____ (mailing address of licensee). If you do not receive*
21 *your refund, you may be entitled to your money back plus a penalty of up to*
22 *\$1,000 and attorney’s fees pursuant to Section 2102 of the California Financial*
23 *Code.”*

24
25 *(c) A cause of action under this section may be brought in small*
26 *claims court if it does not exceed the jurisdiction of that court, or*
27 *in any other appropriate court. The customer shall be entitled to*
28 *recover each of the following:*

29 *(1) Any and all money received for transmission, plus any fees*
30 *and charges paid by the customer.*

31 *(2) A penalty in an amount not to exceed one thousand dollars*
32 *(\$1,000). The court shall award the prevailing party costs and*
33 *attorney’s fees.*

34 *2103. (a) The receipt presented to each customer for money*
35 *received for transmission pursuant to subdivision (b) of Section*
36 *2102 shall clearly state the rate of exchange for the particular*
37 *transaction, if any, the amount of commission or fees, and the net*
38 *exchange after all fees and commissions have been deducted. The*
39 *receipt shall also state the total amount of money presented by the*
40 *customer and the total amount to be delivered to the beneficiary*

1 *designated by the customer. These disclosures shall be in English*
2 *and in the same language as that principally used by the licensee*
3 *or any agent of the licensee to advertise, solicit, or negotiate, either*
4 *orally or in writing, at that branch office if other than English.*

5 *(b) If window and exterior signs concerning the rates of*
6 *exchange for money received for transmission are used, they shall*
7 *clearly state in English and in the same language principally used*
8 *by the licensee or any agent of the licensee to advertise, solicit, or*
9 *negotiate, either orally or in writing, at that branch office if other*
10 *than English, the rate of exchange for exchanging the currency of*
11 *the United States for foreign currency. If an interior sign or any*
12 *advertising is used that quotes exchange rates, it shall, in addition*
13 *to clearly stating the rates of exchange for exchanging the currency*
14 *of the United States for foreign currency, also state all commissions*
15 *and fees charged on all such transactions.*

16 *(c) At each branch office, there shall be disclosed the exchange*
17 *rates, fees, and commissions charged in English and in the same*
18 *language principally used by the licensee or any agent of the*
19 *licensee to advertise, solicit, or negotiate, either orally or in*
20 *writing, with respect to money received for transmission at that*
21 *branch office. At each branch office, there shall be signage clearly*
22 *identifying the name of the licensee as well as any trade names*
23 *used by the licensee at that branch office.*

24 *(d) If the customer does not specify at the time the money is*
25 *presented to the licensee or its agent the country to which the*
26 *money is to be transmitted, the rate of exchange for the transaction*
27 *is not required to be set forth on the receipt. If the customer does*
28 *specify at the time the money is presented to the licensee or its*
29 *agent the country to which the money is to be transmitted but the*
30 *specified country's laws require the rate of exchange for the*
31 *transaction to be determined at the time the transaction is paid*
32 *out to the intended recipient, the rate of exchange for the*
33 *transaction is not required to be set forth on the receipt.*

34 *2104. Each licensee or agent shall prominently post on the*
35 *premises of each branch office that issues or sells payment*
36 *instruments, and at machines located in this state and operated*
37 *by the licensee or agent that issues or sells payment instruments,*
38 *a notice clearly stating that payment instruments are not insured*
39 *by the federal government, the state government, or any other*
40 *public or private entity. This notice shall be printed in English and*

1 *in the same language principally used by the licensee or any agent*
2 *of the licensee to advertise, solicit, or negotiate, either orally or*
3 *in writing, with respect to the purchase of payment instruments.*
4 *The information required in this notice shall be clear, legible, and*
5 *in letters not less than one-half inch in height. The notice shall be*
6 *posted in a conspicuous location in the unobstructed view of the*
7 *public within the premises. The licensee shall provide to each of*
8 *its agents the notice required by this section. In those locations*
9 *operated by an agent, the agent, not the licensee, shall be*
10 *responsible for the failure to properly post the required notice.*

11 2105. (a) *Each licensee or agent shall prominently post on*
12 *the premises of each branch office that conducts money*
13 *transmission a notice stating that:*

14
15 *“If you have complaints with respect to any aspect of the money*
16 *transmission activities conducted at this location, you may contact the*
17 *California Department of Financial Institutions at its toll-free telephone*
18 *number, 1-800-622-0620, by e-mail at consumer.complaint@dfi.ca.gov,*
19 *or by mail at Department of Financial Institutions, Consumer Services,*
20 *1810 13th Street, Sacramento, CA 95811.”*

21
22 (b) *The commissioner may by order or regulation modify the*
23 *content of the notice required by this section. This notice shall be*
24 *printed in English and in the same language principally used by*
25 *the licensee or any agent of the licensee to advertise, solicit, or*
26 *negotiate either orally or in writing, with respect to money*
27 *transmission at that branch office. The information required in*
28 *this notice shall be clear, legible, and in letters not less than*
29 *one-half inch in height. The notice shall be posted in a conspicuous*
30 *location in the unobstructed view of the public within the premises.*
31 *The licensee shall provide to each of its agents the notice required*
32 *by this section. In those locations operated by an agent, the agent,*
33 *and not the licensee, shall be responsible for the failure to properly*
34 *post the required notice.*

35 2106. (a) *No licensee shall sell or issue any form of payment*
36 *instrument in California unless a certified copy of the payment*
37 *instrument has first been filed with the commissioner. The payment*
38 *instrument shall clearly identify the licensee as the issuer.*

39 (b) *The commissioner may by order or regulation declare that*
40 *a form of payment instrument is prohibited if it is misleading in*

1 any material respect or otherwise does not comply with applicable
2 law.

3 (c) A payment instrument that identifies the agent through which
4 the licensee sells the payment instrument shall identify the agent
5 as such and shall identify the licensee at least as conspicuously
6 as it does the agent.

7

8 CHAPTER 7. EXAMINATIONS, SPECIAL REPORTS, AND RECORDS

9

10 2120. (a) The commissioner may at any time and from time
11 to time examine the business and any office, within or outside this
12 state, of any licensee or any agent of a licensee in order to
13 ascertain whether that business is being conducted in a lawful
14 manner and whether all money transmission is properly accounted
15 for.

16 (b) The directors, officers, and employees of any licensee or
17 agent of a licensee being examined by the commissioner shall
18 exhibit to the commissioner, on request, any or all of the licensee's
19 accounts, books, correspondence, memoranda, papers, and other
20 records and shall otherwise facilitate the examination so far as it
21 may be in their power to do so.

22 2121. The commissioner may consult and cooperate with other
23 state or federal money transmission regulators in enforcing and
24 administering this chapter. They may jointly pursue examinations
25 and take other official action that they are otherwise empowered
26 to take.

27 2122. A licensee shall file a report with the commissioner
28 within five business days after the licensee has reason to know of
29 the occurrence any of the following events:

30 (a) The filing of a petition by or against the licensee under the
31 United States Bankruptcy Code (11 U.S.C. Secs. 101-110, incl.)
32 for bankruptcy or reorganization.

33 (b) The filing of a petition by or against the licensee for
34 receivership, the commencement of any other judicial or
35 administrative proceeding for its dissolution or reorganization,
36 or the making of a general assignment for the benefit of its
37 creditors.

38 (c) The commencement of a proceeding to revoke or suspend
39 its license in a state or country in which the licensee engages in
40 business or is licensed.

1 (d) *The cancellation or other impairment of the licensee’s bond*
2 *or other security.*

3 (e) *A charge or conviction of the licensee or of an executive*
4 *officer, manager, director, or person in control of the licensee for*
5 *a felony.*

6 (f) *A charge or conviction of an agent for a felony.*

7 2123. *A licensee that is a money services business under the*
8 *regulations adopted pursuant to the United States Bank Secrecy*
9 *Act (31 C.F.R. Part 103) and the agents of the licensee that are*
10 *money services businesses shall comply with those regulations.*

11 2124. (a) *A licensee shall maintain the following records for*
12 *determining its compliance with this chapter for at least three*
13 *years:*

14 (1) *A record of each payment instrument or stored value*
15 *obligation sold.*

16 (2) *A general ledger posted at least monthly containing all asset,*
17 *liability, capital, income, and expense accounts.*

18 (3) *Bank statements and bank reconciliation records.*

19 (4) *Records of outstanding payment instruments and stored*
20 *value obligations.*

21 (5) *Records of each payment instrument and stored-value*
22 *obligation paid within the three-year period.*

23 (6) *A list of the last known names and addresses of all of the*
24 *licensee’s agents and their branch offices.*

25 (7) *Any other records the commissioner reasonably requires by*
26 *order or regulation.*

27 (b) *A licensee or its agent shall maintain records of any receipts*
28 *provided pursuant to Section 2102 for six months or a longer*
29 *period of time specified in the contract between the licensee and*
30 *its agent.*

31 (c) *The items specified in subdivisions (a) and (b) may be*
32 *maintained in any form of record.*

33 (d) *Records may be maintained outside this state if they are*
34 *made available to the commissioner on seven days’ notice that is*
35 *sent in a record.*

36 (e) *If records not required to be maintained in English pursuant*
37 *to Section 456 are in a language other than English, the licensee*
38 *shall provide records translated into English within seven days’*
39 *notice that is sent in a record.*

CHAPTER 8. *ADDITIONAL ENFORCEMENT PROVISIONS*

1
2
3 2148. (a) *If it appears to the commissioner that a licensee is*
4 *violating or failing to comply with any law of this state, the*
5 *commissioner may direct the licensee to comply with the law by*
6 *an order issued under the commissioner's official seal, or if it*
7 *appears to the commissioner that any licensee is conducting its*
8 *business in an unsafe or injurious manner, the commissioner may*
9 *in like manner direct it to discontinue the unsafe or injurious*
10 *practices. The order shall require the licensee to show cause before*
11 *the commissioner, at a time and place to be fixed by the*
12 *commissioner, as to why the order should not be observed.*

13 (b) *If, upon any hearing held pursuant to subdivision (a), the*
14 *commissioner finds that the licensee is violating or failing to*
15 *comply with any law of this state or is conducting its business in*
16 *an unsafe or injurious manner, the commissioner may make a final*
17 *order directing it to comply with the law or to discontinue the*
18 *unsafe or injurious practices. A licensee shall comply with the*
19 *final order unless, within 10 days after the issuance of the order,*
20 *its enforcement is restrained in a proceeding brought by the*
21 *licensee.*

22 2149. (a) *The commissioner may issue an order suspending*
23 *or revoking a license, or taking possession of and placing a*
24 *licensee in receivership, if after notice and an opportunity for*
25 *hearing, the commissioner finds that:*

26 (1) *The licensee is violating this chapter or a regulation adopted*
27 *or an order issued under this chapter, or a condition of approval*
28 *issued under this chapter.*

29 (2) *The licensee does not cooperate with an examination or*
30 *investigation by the commissioner.*

31 (3) *The licensee engages in fraud, intentional misrepresentation,*
32 *or gross negligence.*

33 (4) *The competence, experience, character, or general fitness*
34 *of the licensee, or any director, officer, employee, or person in*
35 *control of a licensee, indicates that it is not in the public interest*
36 *to permit the person to provide money transmission services.*

37 (5) *The licensee engages in an unsafe or unsound practice.*

38 (6) *The licensee is insolvent, suspends payment of its obligations,*
39 *or makes a general assignment for the benefit of its creditors.*

1 (7) *The licensee does not remove an agent after the*
2 *commissioner issues and serves upon the licensee a final order*
3 *including a finding that the agent has violated this chapter.*

4 (8) *The licensee has applied for an adjudication of bankruptcy,*
5 *reorganization, arrangement, or other relief under any bankruptcy,*
6 *reorganization, insolvency, or moratorium law, or any person has*
7 *applied for any such relief under that law against the licensee and*
8 *the licensee has by any affirmative act approved of or consented*
9 *to the action or the relief has been granted.*

10 (9) *Any fact or condition exists that, if it had existed at the time*
11 *when the licensee applied for its license, would have been grounds*
12 *for denying the application.*

13 (b) *In determining whether a licensee is engaging in an unsafe*
14 *or unsound practice, the commissioner may consider the size and*
15 *condition of the licensee's provision of money transmission*
16 *services, the magnitude of the loss, the gravity of the violation of*
17 *this chapter, and the previous conduct of the person involved.*

18 2150. (a) *The commissioner may issue an order suspending*
19 *or revoking the designation of an agent if, after notice and an*
20 *opportunity for hearing, the commissioner finds that:*

21 (1) *The agent violated this chapter or a regulation adopted or*
22 *an order issued under this chapter.*

23 (2) *The agent did not cooperate with an examination or*
24 *investigation by the commissioner.*

25 (3) *The agent engaged in fraud, intentional misrepresentation,*
26 *or gross negligence.*

27 (4) *The agent is convicted of a violation of a state or federal*
28 *anti-money laundering statute.*

29 (5) *The competence, experience, character, or general fitness*
30 *of the agent, or any director, officer, employee, or person in control*
31 *of the agent, indicates that it is not in the public interest to permit*
32 *the agent to provide money transmissions.*

33 (6) *The agent is engaging in an unsafe or unsound practice.*

34 (7) *The agent has made or caused to be made in any application*
35 *or report filed with the commissioner or in any proceeding before*
36 *the commissioner, any statement that was at the time and in the*
37 *light of the circumstances under which it was made, false or*
38 *misleading with respect to any material fact, or has omitted to*
39 *state in any of those applications, reports, or proceedings any*
40 *material fact which is required to be stated therein.*

1 (8) *The agent is an agent of a licensee who, because of its*
2 *operations and financial condition, is not competent to supervise*
3 *and monitor the agent.*

4 (9) *The agent will not comply with all applicable provisions of*
5 *this chapter and of any regulation or order issued under this*
6 *chapter.*

7 (b) *In determining whether an agent is engaging in an unsafe*
8 *or unsound practice, the commissioner may consider the size and*
9 *condition of the agent's provision of money transmission services,*
10 *the magnitude of the loss, the gravity of the violation of this chapter*
11 *or a rule adopted or order issued under this chapter, and the*
12 *previous conduct of the agent.*

13 (c) *No licensee shall appoint as an agent any person with respect*
14 *to whom an order issued under this section is in effect.*

15 (d) *No person with respect to whom an order issued under this*
16 *section is in effect shall become or continue to be an agent of any*
17 *licensee.*

18 (e) *If applicable, the commissioner may disclose to the licensee*
19 *criminal history information upon which an order is based.*

20 2150.1. (a) *Every order, decision, or other official act of the*
21 *commissioner is subject to review in accordance with law.*

22 (b) *Whenever the commissioner has taken possession of the*
23 *property and business of any licensee, the licensee, within 10 days*
24 *after that taking, if it deems itself aggrieved thereby, may apply*
25 *to the superior court in the county in which the head office of the*
26 *licensee is located to enjoin further proceedings. The court, after*
27 *citing the commissioner to show cause why further proceedings*
28 *should not be enjoined and after a hearing and a determination*
29 *of the facts upon the merits, may dismiss the application or enjoin*
30 *the commissioner from further proceedings and direct the*
31 *commissioner to surrender the property and business to the*
32 *licensee.*

33 2150.2. (a) *If the commissioner finds that any of the factors*
34 *set forth in Section 2149 is true with respect to any licensee and*
35 *that it is necessary for the protection of the public interest, the*
36 *commissioner may issue an order immediately suspending or*
37 *revoking the licensee's license.*

38 (b) *Within 30 days after the license is suspended or revoked*
39 *pursuant to subdivision (a), the licensee may file with the*

1 commissioner an application for a hearing on the suspension or
2 revocation.

3 (c) If the commissioner fails to commence a hearing within 15
4 business days after the application is filed with the commissioner
5 pursuant to subdivision (b) or within a longer period of time agreed
6 to by the licensee, the suspension or revocation shall be deemed
7 rescinded.

8 (d) Within 30 days after the hearing, the commissioner shall
9 affirm, modify, or rescind the suspension or revocation. Otherwise,
10 the suspension or revocation shall be deemed rescinded.

11 (e) The right of the licensee to petition for judicial review of the
12 suspension or revocation shall not be affected by the failure of the
13 licensee to apply to the commissioner for a hearing on the
14 suspension or revocation pursuant to subdivision (b).

15 2151. (a) If the commissioner finds that any of the factors set
16 forth in Section 2150 is true with respect to any agent and that it
17 is necessary for the protection of the public interest, the
18 commissioner may issue an order immediately suspending or
19 barring that agent from continuing to be or becoming an agent of
20 any licensee during the period for which that order is in effect.

21 (b) Within 30 days after an order is issued pursuant to
22 subdivision (a), the licensee or the agent or former agent with
23 respect to whom the order was issued may file with the
24 commissioner an application for a hearing on the order.

25 (c) If the commissioner fails to commence a hearing within 20
26 business days after the application is filed with the commissioner
27 pursuant to subdivision (b) or within a longer period of time agreed
28 to by the parties, the suspension or revocation shall be deemed
29 rescinded.

30 (d) Within 30 days after the hearing, the commissioner shall
31 affirm, modify, or rescind the order.

32 (e) The right of the licensee or agent or former agent to petition
33 for judicial review of the order shall not be affected by the failure
34 of that person to apply to the commissioner for a hearing on the
35 order pursuant to subdivision (b).

36 2151.1. The commissioner may assess a civil penalty against
37 a person that violates this chapter or a regulation adopted or an
38 order issued under this chapter in an amount not to exceed one
39 thousand dollars (\$1,000) for each violation or, in the case of a
40 continuing violation, one thousand dollars (\$1,000) for each day

1 or part thereof during which the violation continues, plus this
2 state’s costs and expenses for the investigation and prosecution
3 of the matter, including reasonable attorney’s fees.

4 2152. (a) A person that intentionally makes a false statement,
5 misrepresentation, or false certification in a record filed or
6 required to be maintained under this chapter or that intentionally
7 makes a false entry or omits a material entry in such a record is
8 guilty of a felony.

9 (b) A person that knowingly engages in an activity for which a
10 license is required under this chapter without being licensed or
11 exempt from licensure under this chapter is guilty of a felony.

12 (c) Nothing in this chapter limits the power of the state to punish
13 any person for any act that constitutes a crime under any statute.

14 2153. The enforcement provisions of this chapter are in
15 addition to any other enforcement powers that the commissioner
16 may have under law.

17

18 CHAPTER 9. MISCELLANEOUS PROVISIONS

19

20 2170. Any licensee may surrender its license by filing with the
21 commissioner the license and a report with any information as the
22 commissioner requires. The voluntary surrender of the license
23 shall become effective at the time and upon the conditions as the
24 commissioner specifies by order.

25 2171. If any provision of this chapter or the application thereof
26 to any person or circumstances is held invalid, illegal, or
27 unenforceable, that invalidity, illegality, or unenforceability shall
28 not affect other provisions or applications of this chapter that can
29 be given effect without the invalid, illegal, or unenforceable
30 provision or application, and to this end, the provisions of this
31 chapter are declared to be severable.

32 2172. (a) A license issued under the former Chapter 14
33 (commencing with Section 1800), Chapter 14A (commencing with
34 Section 1851), or the former Division 16 (commencing with Section
35 33000) that is in effect immediately before January 1, 2011, shall
36 remain in effect as a valid license under this chapter.

37 (b) Any person that, prior to January 1, 2011, was not required
38 to obtain a license under the former Chapter 14 (commencing with
39 Section 1800), Chapter 14A (commencing with Section 1851), or
40 Division 16 (commencing with Section 33000), but is required to

1 have a license under this chapter, shall file an application for a
2 license pursuant to this chapter by July 1, 2011, in order to
3 continue conducting money transmission in this state directly or
4 through agents. If the application is timely filed and pending with
5 the commissioner, that person may continue to conduct money
6 transmission in this state, until the application has been approved,
7 abandoned, or denied.

8 SEC. 5. The heading of Division 1.1 (commencing with Section
9 4000) of the Financial Code is amended and renumbered to read:

10
11 DIVISION ~~1.1~~.1.3. THE SETTING OF FEES IN CONSUMER
12 CREDIT AGREEMENTS AND RELATED CONSUMER
13 PROTECTIONS

14
15 SEC. 6. The heading of Division 1.2 (commencing with Section
16 4050) of the Financial Code is amended and renumbered to read:

17
18 DIVISION ~~1.2~~.1.4. CALIFORNIA FINANCIAL
19 INFORMATION PRIVACY ACT

20
21 SEC. 7. The heading of Division 1.3 (commencing with Section
22 4100) of the Financial Code is amended and renumbered to read:

23
24 DIVISION ~~1.3~~.1.5. FINANCIAL INSTITUTIONS

25
26 SEC. 8. The heading of Division 1.5 (commencing with Section
27 4800) of the Financial Code is amended and renumbered to read:

28
29 DIVISION ~~1.5~~.1.6. DEPOSITORY CORPORATIONS—SALE,
30 MERGER, AND CONVERSION

31
32 SEC. 9. The heading of Division 1.6 (commencing with Section
33 4970) of the Financial Code is amended and renumbered to read:

34
35 DIVISION ~~1.6~~.1.7. ~~COVERED~~ COVERED LOANS

36
37 SEC. 10. The heading of Division 1.7 (commencing with Section
38 4981) of the Financial Code is amended and renumbered to read:

39
40 DIVISION ~~1.7~~.1.8. SECURITIES SALES

1 *SEC. 11. The heading of Division 1.8 (commencing with Section*
2 *4990) of the Financial Code is amended and renumbered to read:*

3
4 DIVISION ~~1.8~~.1.9. PERSONS CONNECTED WITH
5 FINANCIAL INSTITUTIONS
6

7 *SEC. 12. The heading of Division 1.9 (commencing with Section*
8 *4995) of the Financial Code is amended and renumbered to read:*

9
10 DIVISION ~~1.9~~.1.10. HIGHER-PRICED MORTGAGE LOANS
11

12
13 **All matter omitted in this version of the bill**
14 **appears in the bill as introduced in the**
15 **Senate, February 18, 2011. (JR11)**
16